United States Court of Appeals

for the Second Circuit

APPENDIX

76-2122

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-2122

PAUL MOYNAHAN,

Appellee,

—v.—

JOHN MANSON,

Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

JOINT APPENDIX

JOHN F. MULCAHY, JR.
Deputy Chief State's Attorney
ROBERT E. BEACH, JR.
Assistant State's Attorney
Drawer H, Amity Station
New Haven, Connecticut 06525
Counsel for Appellant

EDWARD F. HENNESSEY
JAMES A. WADE
ROBINSON, ROBINSON & COLE
799 Main Street
Hartford, Connecticut 06103
Counsel for Appellee

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DOCKET ENTRIES

DATE	PROCEEDINGS	Date O Judgmen
1973		
11-9	1. Petition For Habeas Corpus, filed.	
11-21	2. ORDER TO SHOW CAUSE WHY A WRIT OF HABEAS CORPUS SHOULD NOT BE ISSUED, filed. Blumenfeld, J.m 11-26-73 Copys mailed to E. Hennessey. Attested copies of ORDER and copies of petition handed to Marshal for service.	
11-32	3. Amended Order To Show Cause Why a Writ of Habeas Corpus Should Not be Issued, Blumenfeld, J.m 12-4-73 Attested copy of amended order and copy of complaint handed to Marshal for service upon F. McDonald, St. Atty.	
11-30	4. Marshal's return showing service upon defendant.	
12-26	5. Appearance of Jerrold H. Barnett entered for def. John R. Manson.	
12-28	6. Marshal's return showing service upon F. McDonald, St. Attorney.	
1-7-74	7. Return to Petition for A Writ of Habeas Corpus with Exhibits filed.	
1-11	8. Motion for Admission to Bail Pending Determination of Habeas Corpus Proceeding, filed.	
1-15	#8 MOTION GRANTED. The petitioner may be admitted to bail upon the execution and filing with the clerk of a bond in the amount of $2500.00 without surety. Blumenfeld, J. m 1-17-74 Copies mailed to counsel of record.	
1-18	9. Motion to Stay Execution of State Court Sentence. "Motion granted J. J. Smith, U.S. Circuit Judge sitting as District Judge by Designation." m 1-22-74	
	10. Appearance Bond filed. Approved. Smith J. J. m 1-22-74	
1-23	11. Petitioner's Memorandum RE: Habeas Corpus Petition filed.	
"	12. Memorandum of Decision filed in Waterbury on 1-17-74. (Exhibit G)	
2-8	13. Motion for Enlargement of Time for Respondent to File Brief filed.	
3-1	14. Respondent's Memorandum Re: Petition for Writ of Habeas Corpus filed with 4 Exhibits.	
3-11	15. Reply Brief filed.	
9-3	16. ORDER,(Re; Exhibits in Crim. file 9801 St. of Ct. vs Moynahan) Blumenfeld, J. m 9/5/74. Copies mailed to Attys Hennessey & Barnett. Attested copies given to Marshal for service upon Clerk, Superior Court, Waterbury.	
9-12	17. Marshal's return showing service of ORDER (#16) upon Clerk.	
11/21	18. Petitioner's Supplemental Memorandum.	
1976		
1-19	19. Motion for Enlargement of time until 2/15/76 to file respondent memorandum	
1-22	Motion for Enlargement of Time filed by Def. granted - Blumenfeld, J., m/1-22-76. Copies to counsel.	
2-17	20 Motion for Enlargement of Time within which to file brief. until 2/27/76. Ordered Accordingly, Markowski, C. m 2-20-76. Copies mailed.	
3-12	21. Respondent's Supplemental Memorandum and Exhibits 13(a)	
8-26	File of Crim. 9801, State of Conn. v Moynahan received from Judge Blumenfeld in Clerks office this date.	
8-31	22 Memorandum of Decision, Blumenfeld, J. m8-31. Copies to counsel, ("unless the State shall elect to retry the petitioner within 60 days of entry of judgment in this action, a writ of habeas corpus shall enter & he shall be released)	
9-3	23 JUDGMENT entered. Blumenfeld J. m 9-3-76. Copies to counsel.	
9-27	24 Request for Stay of Order Pending Appeal filed by def.	
"	25. APPEARANCE OF John F. Mulcahy Jr. entered for the def.	
"	26 Appearance of Robert E. Peach Jr. entered for the def.	
"	27 Notice of Appeal filed. Copies mailed to counsel. Attested copies of notice and docket entries mailed to U.S. Court of Appeals and New Haven. Civil Management Plan and Forms C & DZ mailed to State's Attorneys.	
9-29	Endorsement on #24 "Stay of execution pending the outcome of this action is granted on condition that appellants comply with all of the time requirements o the Rules. MJB 9-29-76. Copies to counsel.	

A 2

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. H-2
MOYNAHAN, Paul	MANSON, John, Commissioner of Corrections of the State of Connecticut	PAGE 2 OF ____

DATE	NR.	PROCEEDINGS
1976		
10-14	28	Designation of Exhibits for Appeal filed by the Appellant.
10-19	29	Motion for Inclusion of State Exhibit Into the Record.
11-1		Motion #29, "Granted" Blumenfeld J. m 11-1-76, Copies to counsel.
11-5		Record on Appeal mailed to U.S. Court of Appeals.

[16]

* * * *

Q Was there any indication when you went to Mr. Reynolds' house -- on a Sunday morning you said?

A Yeh, that was on a Sunday morning.

Q Could you tell, looking at the set, whether anyone else had ever repaired it?

A Well, it's pretty rough to tell actually, unless there's parts cut out of it -- a lot of tubes in there look like they're all the original tubes.

Q What was the problem with the set that day; it had something to do with soldering, I think?

A Yeh. He had no sound on the television, and it was the discriminator coil in the set was bad, so I had to take the coil apart and rewind part of it there to fix it for him.

Q Was the picture good?

A The picture was all right. All it needed was some adjustment.

Q And did you have it on while you were making these adjustments?

A Well, I put the picture on after I had fixed the sound and adjusted the set for him.

Q And no question, it was a large color TV?

A Well, it was a 23-inch rectangular color TV set.

Q Floor model type?

A Yeh, console.

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[17]

Q Console type.

You don't remember the make?

A No. It probably was a Motorola, because at that time -- yeh, they were the ones that had the 23-inch rectangular screen.

Q And this is again about a year ago?

A About a year and a half now.

Q Year and a half. And it was also in the summer?

A It was around the summertime, yeh.

Q Football was on though?

A It was some -- I can't remember exactly what date it was, but I know about a year and a quarter to a year and a half ago, approximately.

Q And it could have been then in the fall of '67?

A Possibly, yeh.

Q Well, we just passed the fall of '68. Yeh. I just want to get the year straight.

You don't know where he bought that set, do you?

A No, I didn't ask him. He said on Sunday he couldn't get ahold of his regular repairman, that's why he called me.

Q Did he mention who that was?

A No, he didn't say.

Q Do you have any idea who he is?

A No, I didn't ask the man who his regular repairman was, and he didn't tell me.

Q But he called you at home?

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A That's right, he called me at my house.

Q And were you surprised to get this call?

A (No response.)

Q Why should he call you?

A Well, I was rather surprised, because I haven't had him for a customer. I know a few people who sometimes will call you at your house and ask you what's wrong with the set or what could be done to fix it, or something like that, but that was the first time he ever called me. A lot of people call down at the store, too, and want to know what can be done before they ask for a service call, they try to fix it themselves.

Q Yeh.

A A lot of times, if it's a circuit breaker or something like that, it'll pop out and they want to know where it is so they can reset it.

Q It seems to me to be strange that he should pick your name out of the hat and call you on a Sunday morning, that's what I'm wondering about.

You had no -- no opportunity to meet him before that, did you?

A No.

Q Had you seen him up at Charlie's before that?

A I think it was after that that I saw him up there.

Q Did he recognize you when you saw him at Charlie's?

A Yeh, I believe he did. He said -- yeh, he said "Hello."

X X X X

Q And you've been to his house on a number of occasions to fix his --

A Yeh, I've stopped over several times, yeh.

Q And when's the last time you were over there?

A Oh, boy, it's hard to answer that because I don't really know. I never kept track of the times I was there.

Q Well, is it less than a month ago?

A No, it's more than that. I haven't seen him for some time. I stopped over there, oh, about maybe three months ago or somewhere around there, I can't remember exactly -- maybe it's before the holidays -- he had some furniture or something he was trying to sell at that time.

Q Was he under arrest at that time?

A I never asked him, but I saw something in the paper about it, yeh.

Q Do you know what for?

A No, I don't. I never asked.

Q Well, did you read it in the paper?

A I saw a part of it in there, but I didn't take the time to read it myself, because somebody told me about it and I didn't happen to have the paper.

Q What were you told that he was arrested for?

A Well, something about movie film or something like that.

Q And receiving stolen goods?

A Well, he didn't mention that part of it. Just the motion picture film or something.

Q And when you fixed his set -- when you were in his house, let's say, three months ago, whenever it was, before the holiday, did you go there on business?

A Well, he called me up on the telephone and asked me if I wanted to come over and look at some of his furniture, I think,he had there, because he was trying to sell it at that time.

Q And did he have for sale a television?

A So I went over there and -- he had one television there he said was his he was selling, a Sylvania, a combination.

Q Big job?

A Yeh, it was a great, big set.

Q Color?

A I believe it was, yeh, color, radio and phono.

Q Did he ever send you any business in the way of repair work, people he referred to you?

A Well, he might have referred me to some people around town, but a lot of them wouldn't say that "Charlie referred me." They'd just call up for a call or like that.

Q And whether or not any policemen had anything repaired in your place?

A Well, I'd say we repaired quite a few sets for different policemen around town.

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X X X X

We have a Gugliemo on Oak Street.

Q I don't know his address.

A I don't know if that's the same one.

Q Do you know if he's a policeman?

A I couldn't tell you or not. I never asked him myself. He never had his uniform on, if he was.

LIEUTENANT RAGAZZI: I think he is one, Oak Street.

BY CAPTAIN BISHOP:

Q Was your relationship with Charlie close; were you friends?

A Well, as I say, I was friendly with him, but I never went out with him or anything like that, as far as I can remember.

Q Did he -- did he ever ask you to repair a stolen TV?

A A stolen television set?

Well, he asked me to repair several sets of his that he had there, but I never asked him if they were stolen or anything.

Q Did you know that he was dealing in stolen goods?

A Well, I didn't know it the first time I met him, but some people were saying that he had connections --

Q You had heard?

A -- on stuff, yeh.

Q You had heard sometime after that?

X X X X

* * * *

this is about two years now, because we had to replace a Yoka set.

Q Is this a color set?

A No, black and white.

Q Black and white. I don't know all the names of all the policemen I'm interested in.

Did you ever handle any stolen sets for Charles Vernale?

A Well, I don't know if I ever handled any or not.

Q Did you ever sell any for him?

A Well, this goes back quite a long time that he sold me a couple pieces over there, but I didn't ask if they were stolen or not. At the time, I didn't know he had stolen sets.

Q How long ago are you talking about now, two years?

A About two years, two and a half years.

Q Do you remember what you did with those sets?

A This goes back so far now --

(Telephone rings.)

CAPTAIN BISHOP: Hello.

Yeh.

Let me call you back.

BY CAPTAIN BISHOP:

Q Ah, --

A Because at the time I would pay him $275 or $350 for a console television set, depending on the make of it.

Q Which is worth what?

A Well, around $500 or so.

Q How did you -- how did you figure that, he could sell you the set for $375 or $275 worth $500 or $600?

A Well, sometimes you can buy them from other people who can sell them, I mean, that they --

Q Well, did he have reasons -- did he give you a reason?

A Well, he said he had a couple of sets there that he wanted to sell, that the people were moving, and he'd sell them cheap because he wanted to sell the set rather than move it.

Q And what did you do with the sets?

A Well, I'd sell them. That's about the only thing you could do with them.

Q You sold these. Do you know to whom?

A Because at the time I had some payments to make or something, I don't know, on my house and I had to make the payment.

Q Do you know who you sold them to?

A This goes back so far now, it's hard to say.

Q Think real good.

A (No response.)

Q Did you sell them to a relative?

A No, I didn't sell to any relatives.

Q You didn't keep one for yourself?

A No.

Q Can you identify the sets?

A I'm just trying to think now and tell you where.

I think one was a Motorola and the other an RCA.

Q Both consoles?

A Well, console or consolette, with removable legs.

Q And how big were the screens?

A I'd say 21-inch.

Q Both of them?

A Yeh.

Q But you can't remember who you sold them to?

A Not right now. I mean, I run across so many people that --

Q Well, it's kind of important, and I'm just wondering if you -- you wouldn't attempt to conceal this fact on us, would you?

A No. If I could recall it right now, I'd tell you right now. The only thing I could do is I could --

Q Incidentally, were they new sets?

A Well, they had some scratches on them. I mean, they didn't look brand new.

Q And were they purchased as used sets or what?

A Well, he told me they had been used. I guess he purchased them as a new television set. The scratched TV -- I mean, if you sell a set to somebody as a brand new one, they want a perfect set without a scratch or anything else on them.

Q So did you sell them as new or used?

A No, I told them they had been used.

Q And do you remember what you sold them for?

A Well, I made about $125.

Q Probably sell them for about $400?

A On a set, yeh.

Q And they cost you roughly about $275?

A About. Approximately that figure, yeh.

Q And did you subsequently get more from Charlie?

A Well, I never went over there and asked him for television sets.

Q Did he bring them over?

A No, he never did.

Q That's (Inaudible).

A I can't recall of any others right now.

Q You can't recall what you did with these two?

A I'll try and find out for you.

Q All right.

A I can't remember right now (Inaudible).

Q Did you -- did you buy anything else from Charlie that you subsequently sold, other than televisions? Did you buy stereos?

A No, I never bought any stereos from him.

Q Clocks?

A No.

* * * *

EDWARD MILLER'S STATEMENT OF FEBRUARY 18, 1969
(PORTIONS DISCLOSED)

* * * * *

Q But Charlie did tell you to take care of Moynahan's set?

A Well, Mr. Moynahan called me directly. He never said anything about taking care of Mr. Moynahan at all.

Q Is that what he told you?

BY SERGEANT COURTNEY:

Q Yesterday I asked you, I said, "Now," I said, "come

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clean with me on Moynahan."

A Well, he called me Sunday morning --

Q Wait a minute. Let me just mention the way you did.

I asked you about Moynahan, and then you gave me the name of Zollo, too, on repairing. Now, I said, "Did Vernale give the recommendation or give the recommendation for you?" and you said, "Indirectly." That's the word you used.

A Well, I have no way of knowing if he gave a recommendation at all.

Q Well, you said "Indirectly." This is the word you used.

A A lot of times they don't tell you --

Q That's the word you used yesterday.

A I mean, a lot of times somebody will call you and they don't tell you who recommends you.

Q Why did you say "Indirectly"? Why didn't you just tell me "No," or "I don't know."?

A Well, I don't know.

Q Why did you say "Indirectly"?

A It would have been better if I did not know if anybody recommended me to any people.

I mean, during the course of business you are recommended to a lot of people.

X X X X

* * * *

Q Well, Eddie, let me ask you: Have you -- you've had a chance to think about all this stuff.

Do you now know what kind of a set Moynahan had, the make?

A Well, it was a color console. It could have been a Motorola, but I don't know exactly.

Q You don't remember?

A It's hard to recall. This goes back almost two years (Inaudible).

Q Yeh. But you had to do considerable work on that, right, Eddie; you had to take --

A Well, it wasn't considerable work. It was one service call, and that was all that was required there. There was some soldering of the chassis.

Q Yeh. But you didn't have to take the chassis out?

A No, you don't have to take the chassis out.

Q No?

A Most of the sets today, you can take the plate off the

bottom of the TV set and service it.

Q But in the course of doing whatever work you had to do on it, you didn't recognize this set as a --

A I did not recognize it.

Q Are they all the same? The coils that you worked on, are they all the same in all the sets

A Well, this particular trouble I believe was on the sound section.

Q Right.

A Each particular type of set is a little bit different system, different coil. They all don't use a universal part. They all have their own parts.

Q But you don't recognize, from memory at least, what this set was, the make of it?

A No. When we go in a house, we try to get to the trouble on there. We don't loook at the make of the television all the time, or --

Q Well, when you look at the make, doesn't that tell you, as a repairman, something about that set?

A Well, not -- not always, no. We generally turn the set on to determine what the trouble is in there.

Q I realize that, but, I mean, once you've established what the trouble is, doesn't the make of the set help you in determining what kind of a coil they have, for instance?

A Well, if you have to order a part, it does. Then you

have to call up the company and order a part for the set.

Q But you don't -- none of this --.

A But, anything I can repair, I will repair other than ordering a part, especially if -- the customer is always in a hurry for their set, they always would like to get it fixed right away, which I believe you understand.

Q Yeh, sure.

A So we try to fix it, if at all possible.

Q Well, I'm just trying to refresh your own memory --

A Yeh, I know it.

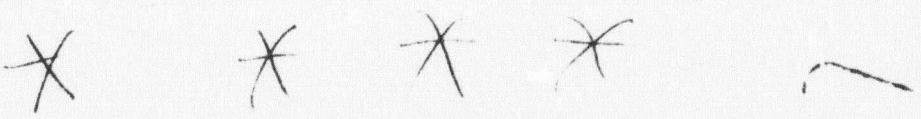
Q -- on this set. You seem to have a pretty good memory on the others. This is one -- of course, you did only see this man once.

A I saw him --

Q In the meantime, --

A That's the only time I did any work for that man, that's right.

A lot of people call you once and they won't ever call you again.



Q In other words, it's near Moynahan's house?

A Well, Moynahan lives up on North Main Street, I believe.

Q Right. All right. Now, when you repaired Moynahan's television set -- correct?

A Yes. He called me up on Sunday because he wanted to watch the ball game.

Q Right.

A So I repaired it for him.

Q Now, what type of a set did he have?

A I think it was a Motorola.

Q Motorola. What kind?

A It was a console.

Q Console. Where was it located in the room when you went up there

A (No response.)

Q How did you get to the set?

A Well, I stopped in front of his house, he opened the door, and I went in.

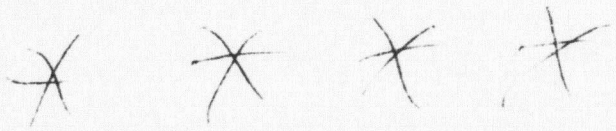
Q And where was the set when you went in?

A It was in the front room, and there's a small alcove I believe off the front room where he had his television set.

Q In other words, it was right off the door as you went in?

A When you walk in, from the back of his house, the television would be on the right-hand side.

Q Right-hand side. All right.



* * * *

LIEUTENANT RAGAZZI: O.K.

As you know, I'm Lieutenant Ragazzi and this is --

MR. MILLER: You were here yesterday.

LIEUTENANT RAGAZZI: Yes, that's right.

And Ed Courtney -- Sergeant Ed Courtney you know?

MR. MILLER: Yeh.

LIEUTENANT RAGAZZI: O.K.

And today is February 18th, and it's approximately 2:20 P.M., and what I want to say to you, Mr. Miller, is this:

That this interview is being recorded, as you know, and I want you to know that anything that you say now can be used in court against you;

That you have a right to an attorney;

That you can stop this interview at any time that you want to;

If you cannot afford an attorney, the State would produce an attorney for you.

I want you to understand these rights; and that you do not have to answer any questions put to you at all.

MR. MILLER: Well, what is the purpose of the interview?

LIEUTENANT RAGAZZI: We just want to go further

than what you told us last night, we want to clarify some of the points of what you told us last night,and we have conducted a further investigation after you left here last night. This is the purpose.

Now, do you understand your rights, what I have given you and what I have just told you?

MR. MILLER: Yeh.

LIEUTENANT RAGAZZI: You understand that?

(There was no response.)

LIEUTENANT RAGAZZI: You still want to continue with this interview?

MR. MILLER: Actually, I couldn't think of anything else to tell you.

LIEUTENANT RAGAZZI: Well, I mean, do you still want to continue with the interview?

As I say, you do not have to answer any of my questions. I want that understood.

MR. MILLER: Yeh.

LIEUTENANT RAGAZZI: Any time you can stop whenever you want to.

MR. MILLER: Yeh. O.K. I'll listen to the questions.

LIEUTENANT RAGAZZI: O.K. Fine.

And then you answer them if you want to.

MR. MILLER: Yeh.

LIEUTENANT RAGAZZI: O.K.

And at any point you feel that you want to stop, you can do so.

O.K.

EXAMINATION BY LIEUTENANT RAGAZZI:

Q Now, on the two sets, Gene Gasparri -- that you sold Gasparri and Carl Stevens -- we checked both of these sets and both of them are stolen sets. You are aware of this, right?

A I didn't know anything about that.

Q Well, I mean that you were aware that -- well, you did purchase both of these sets from Charles Vernale, is that correct?

A Well, --

Q Isn't that what you told us last night?

A That's what I said yesterday, that's right.

Q I mean, has it changed since last night?

A No, it hasn't changed.

Q O.K. Then you did purchase both of these sets from Charles Vernale?

A But they were paid for, that's why at the time I was unaware of them being a stolen TV set.

Q But you -- how -- what were the circumstances of your purchase from Charles Vernale of these two sets?

A Well, I can't recall any circumstances. I mean --

Q Did you go down to his place of business and pick them up or did he deliver them?

A I was contacted on the telephone.

Q Yes.

A That's how he contacted me, any time he'd call the store.

Q And what did he say to you?

A Well, he wanted me to come over and look at some television sets he had for repair, which I did.

Q Weren't both of these new sets?

A To my knowledge, they weren't new.

Q Well, didn't one of them have a warranty right on the back of it, still screwed to the back of the set?

A Gee, I can't recall now whether it did or not, to tell you the truth.

Q The Stevens set, wasn't there a warranty screwed to the back of the set?

A I think there was an instruction book there, as far as I know.

Q Subsequently, didn't Mrs. Stevenson call the store and want to have the set repaired on her warranty?

A I believe so, yeh. (Inaudible)

Q It was repaired?

A Yeh. That's right.

Q By who?

A I repaired it for them.

Q You repaired it?

A That's right.

Q All right. Now, other than the Gasparri set and the Stevenson set, Stevens set, who else did you sell sets to that you bought from Charles Vernale?

A That is all, because I haven't seen him for over a year now.

Q Yeh, but we --

A Outside of that one time before the holidays.

Q Well, this is not running with -- running consistent with the information that we have. We have additional information which is not consistent with this, and we'd like to have you tell us.

A Well, as I said, most of my business was television repair work, not sales.

Q Yeh, but you bought more than two sets from Charles Vernale other than these two. Would you care to tell us about them?

A Well, as far as I can remember, those are the only two television sets I had contact with. Over the holidays he offered to sell me the stuff in his house there, but I didn't want to buy it.

X X X X

"Indirectly," and the person's name--

A But the people did no t know me.

Q Oh.

A But he recommended me to go up there.

Q Did Charlie ever mention to you that he recommended a few persons to you on Sundays?

A Well, he never mentioned it to me.

Q Did he mention it to anybody else?

A Not that I know of, he didn't.

BY LIEUTENANT RAGAZZI:

Q Who sold the set to Zollo?

A I have no idea whether they bought their set from --

Q What type of a set has he got?

A They did not tell me. It's a color console, but that's as far as I know. I can't remember the make or anything.

Q You know you people are in violation, you're not marking any of them serial numbers down when you do these repairs?

A We are. Well, we have been marking the model number down I believe.

Q You don't even have the model number. We've got all of your bills out here.

A I see.

Q There's no model number, no serial number on any of them. (Indicating)

A All the ones that we've been taking now have the model and serial number on them.

Q Maybe since we've made contact, but prior to that, right up until the 18th of -- 17th of this month, and last month and right up through, nothing.

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~~or I never~~ had any television sets from him in the store.

Q And the others --

A The only time he'd ever stop by is if he'd bring a radio in or something like that he'd want fixed. That's all he'd bring in there.

As I say, I did not hardly know the man. I mean, being in that section up there, he would come in there I believe from time to time, but that's as much as I knew him.

Q And you only bought the two sets off him?

A That's all.

BY LIEUTENANT RAGAZZI:

Q Aren't you in a little difficulty financially?

A Well, these days, I guess everybody is.

Q Yeh, but, I mean, aren't you really up tight at this particular point?

A Well, let's say I don't have any excessive money. I'm just trying to get by, that's about all.

Q Isn't this one of the reasons that you formed the corporation with Fellin?

A Well, one of the reasons was because I was working all by myself before and it's hard to do the work and have somebody watch the store, so by forming the corporation, there's three of us there, and you can get around a lot better; one can stay in the store and the others can go out and do the repair work.

Q Are you having domestic trouble?

A Domestic trouble?

Q Yeh. With your wife.

A Well, we get along, but nothing fabulously.

Q Listen, this is one of your sales slips, a repair slip. What's the name on that?

A Longo.

Q What is it?

A Longo.

Q Longo. What street address?

A There's no address on there.

Q Yeh, but, I mean, do you know who it is?

A (No response.)

Q Is that your writing?

A No, that's not my writing on there either. That goes back 1/7/69. No, it must have been somebody that came in the store down there. I don't recognize this slip at all. I didn't make it out.

Q But that is the name, Longo?

A Longo, that's right.

Q And again I bring to your attention there's no serial number on the set, no description of the set, nothing at all, and this is pretty consistent with the type of sales slips that we're getting from you people, repair slips, and you

know that's a violation of the general statutes?

A I see.

Q That you should, in fact, mark the sales slip -- the serial number, the model number on the set. Now, this is one of the requirements that this be done.

A A lot of times, on a small radio or something, you won't find any model or serial number on it.

Q Well, there's always something, some sort of identification. We're talking about TV repairs, we're not talking about radio.

Now, look, Ed, up to now you must realize that we've talked to an awful lot of people --

A Oh, I suppose so.

Q -- prior to coming down to you.

A You're conducting an investigation, that's right.

Q That's right. We're conducting an investigation here and we've gotten to many, many people and, as you probably know, we're fairly well versed on the subject that we're pursuing here, and we know an awful lot.

Now, we're trying to do this thing as nice as we know how and we want your cooperation in this --

A Well, I'm trying to give it to you, if I can.

Q Well, you've cooperated with us to a degree, we know this, --

A I mean, there's a lot of things I don't know. I mean, you've asked me questions, I don't --

Q Well, you're not answering me truthfully when you tell me that all you did was handle two sets from Charles Vernale. Now, we know this and you know this. Now, we're trying to be fair with you and we're trying to be decent and honest, and I want you to do the same thing with us.

Now, again I say, I know that you have handled more than the Gasparri set and the Stevens set. We know this.

Now, I don't know why you're taking this particular position, why you won't tell us the rest of the circumstances of the other sets.

A Well, there weren't any other television sets at all.

Q Well, there's more sets, there's more stereos, there's other items involved between you and Charlie.

A There weren't any stereos or anything like that.

Q Let's talk television sets.

LIEUTENANT RAGAZZI: Look, Sergeant Courtney has a question to ask you.

BY SERGEANT COURTNEY:

Q Tell me, these two sets that you did take to these two people, Stevens and Gasparri, how well did you check over these sets? Do you send them out unchecked or do you check them over good?

A Well, the adjustments are checked on the set, and that was it.

Q And where is the adjustments?

A Well, the adjustments are inside the set.

Q Inside. What do you mean by "inside the set"?

A (No response.)

Q Where is it, the front, the back, the side, the top?

A Well, the convergents (sic.) adjustments are on the (Inaudible) neck of the tube. The black and white --

Q Where is the tube? Where would I get to the tube?

A You take the back off.

Q You have to take the back of what off?

A The TV set.

Q The TV set?

A (No response.)

Q All right. If I take the back of the TV set, there would be a particular -- what -- what would be there, the serial number?

A Well, there would be a label (Inaudible) who the set was made by. Then, of course, you generally have the model or serial number on the TV.

Q You delivered the Gasparri set, correct?

A That's right, yeh.

Q And you checked this set over, front, back, tuning,

everything?

A Well, I checked the adjustments on it.

Q And you had to go to the back of the set for the adjustments?

A That's right.

Q Would it be, shall be say, suspicious to you to see a number scratched off there?

A Well, not always, no, because we run across a lot of sets with no number on the back.

Q This is a new set now?

A A nu mber off or something like that.

Q This is a new set?

A A lot of times ;you don't check the number, as I said before.

Q But would it be suspicious to you to have a number scraped off?

A No, it wouldn't be, because I run across a lot of new sets, even from the factory --

Q Let's take the Admiral set. You know anAdmiral set, right?

A Yeh, I've worked on quite a few of them.

Q You know where all the area tubes are and so forth and so on. What's on the edge of the set?

A (No response.)

BY LIEUTENANT RAGAZZI:

Q Why would this happen?

A Well, I don't know. I didn't make out that slip there.

LIEUTENANT RAGAZZI: O.K.

BY SERGEANT COURTNEY:

Q Did you notice anything scratched out on this set?

A To tell you the truth, I did not.

Q O.K. Tell me, about three weeks to a month ago, was your name mentioned in the paper?

A To my knowledge, it hasn't been.

I read the morning paper, but I haven't seen my name mentioned in the paper at all.

Q Were you called down about three weeks to a month ago on some stolen television sets?

A No.

Q We had information that you were.

A No, my name was never mentioned in the paper and I was never called in for any -- for selling any TV sets as you say it there.

BY LIEUTENANT RAGAZZI:

Q Well, of course, I still feel that you're not being truthful with us, Ed. I think that you know a lot more than you're telling us, and I don't know why you're taking --

A I honestly don't know any more.

Q Well, look, we know that Charlie was up to your place at least on four different occasions, and all your meetings would be you'd go out of the store and you'd discuss --

A Well, he come in the television store and he'd ask to get something repaired, a record play or something --

Q Well, why did you do your business outside the store as opposed to inside the store?

A I did. He'd bring his radio inside, then he'd tell me he wanted me, if I had a chance, to go over to his house, over there, to take a look at his set in the room there.

Q Yeh. Wasn't there a few occasions where he'd come up, toot the horn, and you'd go outside?

A No, he would never toot the horn.

Q We have different information.

A As far as I know,he always came in the store.

Q Ed, you've got to remember, we're not making any of this up. I mean, I want you to understand that. This isn't a figment of our imagination, anything that we're asking you.

A Yeh.

Q We're asking you factual questions.

A But the Sergeant just says my name in the paper. My name was not in the paper. You can get the back copies of all the Waterbury papers and check it out. I don't know if you have or not.

Q Well, let's get back to Charles Vernale. Isn't it true

Gasparri and Stevens, what was the date that you delivered them two sets? Do you remember?

A Well, it'd be almost two years, I'd say.

Q Can you be more specific than that?

A That's about as close as I can remember. One is about a year and three-quarters and the other would be just about two years, I'd say.

Q You figure about two years ago?

A I'd say so.

Q All right. When you got them -- how much prior to delivery did you get them from Charlie? How long did you have the sets before you sold them, or had you sold them and then picked them up from Charlie and then delivered them?

A Gee, I don't recall, to tell you the truth.

Q Well, how much -- about how long did you have them before you sold them?

A As far as I know, I brought them right over there, because I had somebody that wanted the set and I bought it, that's the only reason why.

Q And you figure that was about two years ago?

A About two years ago.

Q All right. Which one would you say was two years ago?

A Approximately two years ago. The two television sets, I'd say, were at about the same time.

Q You'd say about February of '67?

A A couple months of each other.

Q '66? '67?

A Probably about March, I'd say, or somewhere around there.

Q March of '67?

A That's as close as I can remember, yeh.

Q Is that the one that you sold to who?

A I believe that's the one that Mr. Stevens bought.

Q March of 1967?

A Yeh. The other ones are -- they are a couple months of each other.

Q And the other one was a couple of months later?

A That's right.

Q All right. What was the -- how much did you charge for the set that you gave to Gasparri, that you sold to Gasparri?

A I believe it was around $500.

Q 500. And how much did you pay for that one?

A Well, the television sets cost me about $300, $400, somewhere around there.

Q Well, didn't you tell us last night that you paid $275 for them from Charlie?

A Well, he'd charge anywhere between $275 and $300 on a set. One was $275 and the other was $300 or $400.

(Telephone rings.)

LIEUTENANT RAGAZZI: Hello.

Yes.

Yeh. Can I call you back, Bill?

O.K. Right.

BY LIEUTENANT RAGAZZI:

Q You paid $275 for the one that you sold to Gasparri?

A That's right. Yeh.

Q And how about the one to Stevens, how much did you sell that to him for?

A $300 -- how much did I sell it to who, to Stevens?

Q To Stevens.

A That was about $500, too.

Q 500. And do you remember what you paid for that one?

A Between three and three and a quarter, I can't remember exactly right now.

Q All right. And you don't remember when -- in other words, you feel that you picked them up from Charlie; your memory serves you right, that you picked them up from Charlie and you delivered them right away.

Did you deliver the same night that you picked up, let's say, Gasparri's -- you picked it up from Charlie and delivered it the same night up to his house.

A (Inaudible)

Q Did you have it in your shop, or what did you do with it?

A Yeh, I went right up there with it the same night.

Q The same night that you picked it up from Charlie?

A That's right.

Q How about the installation, as far as the antenna is concerned, did you do the antenna work for these people or what?

A No, I didn't do any antenna work.

Q You didn't. Did you refer them to somebody to do the antenna work?

A No, I never did.

Q And the Stevenson one, you figure you picked up two years ago, and the other one about a year and three-quarters?

A Approximately.

Q How did these people, Gasparri and Stevens, get in touch with you relative to the purchase of these sets?

A How did they get in contact with me?

Q Yeh. How did you know that these two people wanted to buy colored TV sets? How did they get in touch with you? What was the story? What were the circumstances?

A Well, I happened to see them and I was talking to them, and they wanted a television set.

Q Do you know them personally?

A I've known them for a long time.

Q Both of these people?

A Both of these people, that's right.

Q Had they been into your store?

A No, they have not been into the store.

Q Did you call them, or did they call you?

A I had occasion to see both of them on different occasions there and that was when they asked me about it.

Q You own your own home?

A Yes, I do.

Q And that's on Floral Nook Road?

A Yeh.

Q Is that a two-family house, one-family?

A No, one.

Q How many children do you have?

A Five.

Q Five kids. How old are they?

A The oldest is fourteen and the youngest is five.

Q Is this your first marriage or second marriage?

A First marriage.

Q First marriage. Now, you did do some repairs on the Stevens --

A That's right.

Q -- TV, right?

A Yeh.

Q Did you charge them for it?

A No, they were never charged.

Q How about Gasparri?

A I did a couple of repairs on his, but his wasn't charged for either.

Q You never made out a repair slip such as this either, did you, for either one of them?

A No. Guarantee work, you very seldom make one out.

Q How do you get paid for the guarantee work?

A Factories do not pay you for guarantee work.

Q They don't?

How about Zollo, did you get paid for working on his set?

A Well, the only one that I can recall working on by that name was a set I adjusted for a party, and they paid for the adjustment on the set.

Q Do you remember how long ago that was?

A Not offhand, I don't. It's pretty hard to remember.

Q Approximately?

A I know it was quite some time ago.

Q You have no slip on them either?

A No.

Q Why didn't you make a slip on that one?

A Well, I didn't make any slip out. It was only labor involved for an adjustment.

Q Don't you know that there are certain requirements that you have to make these things out?

A Yes, I realize that now.

Q And it's a violation of the law by not having them?

A Yes, I realize that now.

Q Well, again, I feel personally, from what we know and what we understand here, you have not been completely truthful with us on this information.

There are other sets we have information indicating that you handled.

A I have not handled any other television sets. As I say, we make a lot of calls, service calls, on different sets.

Q All right. Let me ask you this: Are there any service calls that you've ever made on any sets that you were suspicious of?

A No. I hadn't started to get suspicious of television sets. I heard about investigations or something like that --

Q I mean, you never came across some television set where you asked the individual where you bought it and he couldn't give you a reasonable --

A No, we never asked anybody where he bought it.

Q You never do?

A No.

Q For business reasons or anything?

A No. The only reason why you would ask -- a lot of times, if it's a set that we service for Grand Way or a place like that, and we have it recorded down it's a Grand Way service call, but they tell you themselves when they call in that the set was purchased down there. Grand Way themselves call.

Q I believe we covered this last night, but just again, just so that we're sure, did you know Charlie Vernale's reputation of being a "fence" of stolen goods?

A No, I did not know his reputation. As I say, north end -- I've only been up there for about five years. I've never lived in the north end of Waterbury.

Q But you know he had been arrested for stolen goods?

A Well, somebody had told me that afterwards, but I did not know the man prior to him coming into the store down there.

Q How did he -- what reason did he give you that he had many sets for sale, new sets for sale, that he would be in possession of these? What reasoning did he use for this?

A Well, at the time I would go up there and he would have, let's say, his own television set there and I would repair that, and he had a stereo there, which would be his own also, and he had different apartments which he rents out furnished, and I fixed a couple record players in different apartments which he had rented.

Q Yeh, but haven't you been in his garage when he had a

multitude of sets? Now, let's be very honest with each other.

A The last time I was in his garage, he had boats in there and like that.

Q Yeh. And he had sets there, too; he had television sets there, a number of them in crates.

A I never saw a number of sets in crates up there, never.

Q Well, you've seen many -- let's forget the crates then. You've seen a lot of sets up there, more than one, more than two, brand new?

A At the time I've been up there, I've only seen maybe one or two sets at a time. I never saw a multitude of sets.

Q Well, what reasoning did he give you for having these sets there? Where did he say he gotthem?

A He didn't tell me where he got the sets from.

Q Weren't you curious?

A Well, he said that they belonged to him, that he had them for his apartments there.

Q Brand new color TV sets for his apartments?

I mean, don't you think that this is unusual?

A Well, I started to think about it there afterwards.

Q But you didn't question him as to where he got them?

A I didn't question him, no. I question nobody when I go in their house. I don't ask them anything about their set.

Q But I'm talking about when you went up there to purchase

these two sets; and you purchased two brand new sets from him for $275 and you know yourself that on the retail market they're worth $500, and you know that there isn't this much of a spread on them from a dealer.

A Well, the spread is about 25 per cent or 30 per cent, it depends on what you buy on, and sometimes at a clearance you can buy them even cheaper. It depends.

Q Did you have to get the money up for Charlie, or did he wait until after you sold the sets before you paid up?

A I've always paid him for anything I've got.

Q Paid him cash or by check, or how did you pay him?

A Well, sometimes I'd pay him by cash, mostly cash, and then I paid him by one check, I believe.

Q Well, then, you did make other transactions with him, other than the two sets, right?

A Well, the two sets, but I didn't have enough cash, so I made out a check for the balance.

Q How much was the balance?

A I think it was $150.

Q Do you still have that check, that cancelled check?

A I still have the check, yeh.

Q Can you find it?

A I can find it, yeh.

Q O.K. Will you find it?

A Yeh, I'll find it. I have it. I think it's down in the store. I'll check down there. I won't be able to check right away though. Say would tomorrow be all right?

Q As long as you produce it, this is all we're interested in.

A Yeh.

Q But then there are other transactions that you've had with him?

A There were two transactions that I had besides the repair work which I did for him. The repair work he always paid for.

Q Do you have anything to indicate that you did repair work for him, and on what sets you did them on?

A No, I haven't. The only thing I have is that check for $150.

Q And you paid him the balance of that -- let's see, 275 -- 550, and you had to pay -- you paid him $400 cash, is that right?

A Well, you're speaking about two sets at one time. Now, I didn't pick those two sets up at one time.

Q How did you pick them up?

A Singularly, because one was two months in advance of the other.

Q I see. I see. So, for the first set, you paid him

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at Charlie's house on different occasions.

A Well, I wouldn't know all these people's names. I mean, --

Q Well, tell me the ones that you do know.

A If I was there, somebody would walk in and go out, like that. That's all I know.

Q Who were the people that you've seen over there?

A I'll tell you the truth, I don't recognize them by name. I'd have to see them, and then I could tell you, because I never would ask anybody their name.

Q Is there anybody that you know by name that you've seen over there?

A I honestly couldn't tell you right now.

SERGEANT COURTNEY: That's not what you said yesterday.

A Well, one time over there, I thought that there was a couple of policemen in there in the house with him sitting down at the table.

Q Who were they, do you know?

A I'm trying to remember their names now, and I can't.

Q Ed, remember one thing. We've been on this investigation for some time --

A Yeh.

Q -- and we've talked to many, many people, and we even

talked to Charlie Vernale, you know.

A I wouldn't doubt it, yeh.

Q Yeh. So, therefore, we know pretty much what we're talking about, and we don't want to extract the truth from you like pulling teeth. We're looking for you for the truth, that's all. We're not looking for anything else, other than the truth.

Now, does that make sense to you, Ed?

A Well, --

Q All we're looking for is the truth and nothing more.

A -- I'm trying to remember as much as I can, but when somebody starts throwing questions at you, it's rather difficult at times.

Q Take your time. Take all the time you want.

A I'm sure if you were in this situation I'm in, you would be the same way, too.

Q Well, let me put it this way: If I had nothing to hide, I wouldn't be concerned, and it's very easy for me and anyone to tell the truth. It's when --

A Oh, I'm not trying to hide anything.

Q -- you don't tell the truth -- it's when you don't tell the truth and then you tell an untruth, and then before you know it you have to tell something else to cover that one and then before you know it you're in up to your ears. So, the best thing at this particular point is come out with the truth,

complete truth, get it all off your chest all at once, and it's the end of it, and we go from there.

Well, the point that I'm trying to make here, too, is that we've got two sets here that you've handled that are stolen, so even if there were twenty-two sets, it isn't going to be any more difficult for twenty-two than it is for two.

You follow me?

A Well, I see your point there.

Q All right. So, --

A I can't think of --

Q Now, we know that there's other sets that you've handled from him, and I'd like you to tell me the truth on these things, Ed.

A Well, I'm telling you the truth, as I remember it there, but I haven't handled --

Q Well, you tax your memory. You tax -- well, I'm not saying forty or fifty.

A But I had nothing to do with any large quantities of television sets at all.

Q Ed, look, you're in the business, you're in the business, and nobody would have to --

A In a whole year's time I only sold about nine or ten television sets in the store. That's about all we sell over there. (Inaudible)

Q Well, maybe it's five or six that you dealed with Charlie, I don't know the complete amount, but I know that it's more than two. I know that it's more than two, Ed.

A If he was selling television sets, I don't know where he would sell the other ones to, myself.

Q Well, as I told you, Ed, -- and we've talked to many, many people, we've talked to Charlie himself, and again, I don't want to put words in your mouth, you understand?

A Yeh, I realize that.

Q All right. So, now, we want it from you, you understand, just like last night.

You gave us this last night. At first when you went out, you said you couldn't remember, then finally --

A Well, the reason why is because you get you rather nervous in here the way you're talking.

Q Gee, I thought the Captain was free, very low key.

A Well, he may have been very nice, that's right, but --

Q Imean, nobody pressured you in any way, you know that.

A But as far as any amounts of television sets, I could not even --

Q Well, we're not saying thirty of forty.

A -- attempt to sell that many.

Q Maybe it's five or seven you've dealt with all told.

A Well, there was only a couple of sets there involved

in this transaction there.

Q Well, there's more than these two, right, Ed? I mean, let's be honest with each other, there's more than these two here that you've given us. Now, will you concede that, Ed?

A Well, actually those were the only two television sets. I had nothing to do with any other quantities. Honestly, I haven't.

Q Ed, you can't make me believe that.

SERGEANT COURTNEY: Nor me either.

Q And, so, this is the point that we're trying to make, Ed; we're just trying to get down to the basic facts in this thing, get it over with, square away Ed Miller, and then we can go on. Otherwise, we're going to have to start looking at Ed Miller a little stronger.

You follow me, Ed?

A Yeh, I realize it.

Q So, this is the point that we're trying to make, nothin more. And, again I want to repeat, all we're looking for, Ed, is the truth, nothing more. Now, you may have reasons why you don't want to tell us the complete truth, but why don't you try us and see.

Maybe it's the best thing in the world that could happen, is that you get right down to the hard-core facts of the whole thing, andsay, "Hey, look, I handled twelve sets, fifteen

sets." I'm just taking an arbitrary figure here.

I'll tell you this: I think it's closer to seven than it is to two.

A No, two is the only quantity in this transaction over there, and they weren't at the same time either.

Q We realize this, and I think these others were spread over a period of time, too, Ed.

I don't think you sold these sets all in a week's time or in a month's time, but you knew Charlie Vernale for a good length of time, you knew him for about two years, and from time to time you got hard up for dough just like everybody else does -- some crises come out at the house, income tax, mortgage payments, car payments -- these things happen, so you got yourself in a bind and you figure this is an easy way out, you pick up yourself $100 or so quick like, and this is what's happened. This is what I think happend, Ed. Right?

I mean, this is where you get down to the bare --

A Well, any money that I had made from the sale of thos two television sets, I paid household bills with.

Q Well, this is -- I'm sure that you did. I'm sure tha this is where the money went. There's no question in my mind is, that you used it for some reason, for paying off a car pay ment, a house payment, probably for groceries -- with five kid today, hey, man, it's not an easy situation.

A Well, I don't have any car payments because my car is a '62 car.

Q All right. I'm just saying or I'm just taking this out of the air, but I say there's other expenses that you have.

If you own your own home, and if you've got five kids and a wife, you've got expenses, just like the rest of us have under the same like circumstances.

A That's right.

Q That's right. You can't go to the store today but it cost you fifty bucks for groceries for kids, five kids. So, I'm in complete sympathy with that. I know what it cost, the cost of living. So this is why I say, maybe -- again I'm getting back to my original question here.

I'm not saying that you bought these sets all within a period of a month and a half, but you knew Charlie Vernale for over two years, and you had a pretty good working knowledge of what Charlie Vernale did.

(Telephone rings.)

LIEUTENANT RAGAZZI: Hello.

I'm sorry, you have the wrong number.

You've got the wrong number.

A Well, it would be two years now that I've known him, but I didn't know him two years prior to that.

Q Oh, all right, it's two years that you've known him.

A As I say, in the north end of town, I have lived there.

Q Yeh, I'm not talking about the north end of town. I'm talking, Ed, where you've known Charlie Vernale for a couple years, and you've known pretty much that Charlie's had an awful lot of stuff, he's handled an awful lot of stuff. He sold stuff to everybody in town, and I'm sure that you've handled more than two sets from him.

As I say, our information indicates this, Ed. We're verifying information. This is what we are in the process of doing right now.

Now, Ed, you just think about it for just a second, and let's supposing now that you walk out that door and we go out and we (inaudible) onto two or three more sets and we trace it right back to Eddie Miller, and then we've got to go down and talk to you again, Ed. This don't look good.

A Yeh, I realize that.

Q All right. This is what you've got to realize, and this is the point that you've got to make in your own mind, because if we go out, we verify two or three other sets without your cooperation, and we've got to bring you back in again.

A Yeh.

Q O.K., Ed. I don't want to bring you back in again. At this particular point, let's get it cleared away. Let's find

out how many sets you've dealt with. You're the one that --

A I didn't get any other sets in because I didn't sell any.

Q Ed, --

A You can't verify that I sold them, because I didn't. Honestly.

Q Ed, -- well, Ed, you can't make me believe --

A I don't know what information that you have, but --

Q Well, you can't make be believe, Ed, that you only dealt with these two sets. You can't make me believe that, and I won't believe that, because of what we know.

Now, again, I'm not saying that you dealt with thirty sets. It could be eight, ten --

A No.

Q -- but probably more likely about seven.

A As far as any quantity goes, no.

Q Well, --

A Number one, because most people want to pay you by time today anyways, and you can't finance a television set. I can't personally.

Q Yeh, but I'm sure you have enough of people that you knew in your business that would pay cash or within a reasonabl time come up with the money.

A I know very few people that have the cash.

Q Well, you knew enough of people around that you knew would get the money and pay you off eventually on the set.

You knew that you could turn a fast buck on these sets, let's be honest with each other, Ed, and you did; on these two sets here, you turned in a fast buck on them. You picked yourself up a couple hundred dollars. No problem. You picked it up. Boom. Quick.

Now, Ed, I'll be very honest with you. We've interviewed these people.

A Yeh, I wouldn't doubt it.

Q Yeh. I mean, this is our job, you'd expect this.

A Yeh,

Q Right?

A Yeh.

Q I mean, you'd expect this, there's no question about that. We've interviewed these people, and we're going to interview a lot of other people.

(Telephone rings.)

LIEUTENANT RAGAZZI: Hello.

Yes.

Oh.

Yeh.

Oh, I see.

Oh, O.K. Fine.

Yeh.

Yeh.

O.K.?

All right. Just a minute.

You want a coffee?

A Yes, I'll have a cup.

LIEUTENANT RAGAZZI: Yeh, Mr. Miller would like a cup of coffee, too, and Ed would want one, and I would want one.

Yeh.

Three regulars.

Right.

Right.

O.K. Right.

Bye.

Q Look, Ed, let's get right down to the bare facts of this thing. Let's get right down to the core of it.

As I say, if you handled two sets or twenty-five sets, if we were going to make a case against you, or if we were going to make a case against you, it isn't going to be anymore worse for twenty-five than it is for two.

You follow this?

A Yeh, I realize that.

Q All right. In other words, many times, when you have

this kind of a case of this nature you get an individual who's broken into fifty places. You never get a guy and charge him with fifty counts. Very rarely do they ever do this, and as long as I've been in this business I've yet to see them do it.

Our prime purpose here is to verify the information that we have. We have an X number of amount of sets that we know were handled by Charlie Vernale, and I'm being very honest with you now. We know that a certain amount went in this direction and a certain amount went in that direction; so to speak, some went north, some went south, some went east, and some went west.

A What you're saying is everybody around town is buying sets.

Q A lot. Not everybody, but a lot of people, as you know.

And we know many of the people who did handle them, soit's just a matter and a question of time, as to how many we're going to recover and where we're going to recover them from. We'll do it with your help or we'll do it without your help. We'd prefer your help.

You follow me?

A Yes, I realize that.

Q All right. This is the point that I'm making. This is completely the point that I'm making. We want your coopera-

tion.

A I'm trying to give it to you, but as far as any number of sets, I didn't have any --

Q Well, I'm not -- again, I'm not talking --

A -- thing to do with that.

Q I'm not talking about twenty or thirty sets, as far as you're concerned.

But I do know there's more than two. This much I know. We knew this when you came in here last night, that's why we asked you to come back again today.

And it wouldn't do me any good, or Sergeant Courtney here, to tell you the places that we know where the other sets are or where they went. This we want from you.

Yes, Ed.

BY SERGEANT COURTNEY:

Q Ed, now, you know me, right?

A Yes, I know you.

Q All right. You know the way we talked yesterday, right?

A Yeh.

Q I'm going to ask you one question. Now, I want you to be real truthful with me.

There is one other set at this particular time?, right or wrong, that you have sold?

A One other set?

Q One other set that we know of right now that you have sold.

Now, why don't you tell us --

A I can't think of any other set.

Q Ed, --

LIEUTENANT RAGAZZI: You think real hard, Ed.

Q -- you think read hard.

Now, look, I'm trying to be friendly. I'm trying to help you out.

There is another set -- as the Lieutenant said, he's going to do it with your help or without your help, and he will do it, please believe me. He will dig and dig.

Now, will you tell me the other set that we know of?

A (No response.)

Q Now, I'm trying to be -- look, you think hard before you answer that.

A Well, I can't think of anything, honestly. Believe me.

BY LIEUTENANT RAGAZZI:

Q Let me ask you this: Why do you think that we came to Miller & Fellin?

A Well, I don't know.

Q There's an awful lot of TV stores in the City of

Waterbury. We've hit a lot of them.

A You could have gone through a lot of stores, I don't know.

Q We came to Miller & Fellin.

A That's right.

Q There's a reason why we came to Miller & Fellin.

A What was the reason why you came?

Q Well, this I'd prefer -- I think we've established pretty much what the reason was.

We've got two sets here that we've established that are stolen, and we know that there were more.

A Well, I haven't -- I haven't handled any sets like that.

Q But you handled two here, Ed.

A As I say, I repaired quite a few sets, but that's another story.

SERGEANT COURTNEY: That's another thing. We'll get to this later.

We'll get to this later, because you were supposed to give me some more names today.

A The people -- I couldn't think of any other names.

SERGEANT COURTNEY: You repaired their sets on your own, but we'll get to this in a minute. We want to get back to the couple of television sets that we know you handled, or y

made contact with. Maybe you didn't handle them; maybe you didn't touch them, but you made contact with Vernale to someone else and you probably were just the go-between, right?

A No, I never made anymore contacts.

BY SERGEANT COURTNEY:

Q Now, you were the go-between; you were the third man on the totem pole. Vernale delivered the set, that you know of.

LIEUTENANT RAGAZZI: Or they were picked up.

A Well, I have adjusted quite a few sets, but I don't know where the people got them.

Q Right. The point is, Vernale told you to adjust the sets, correct?

A Well, he had the people call me --

BY LIEUTENANT RAGAZZI:

Q Ed, let me put it this way: Why don't you tell me about the people who have sets today, that you feel we should check?

You follow me? Without going any further here.

In other words, sets that you know weren't bough through a store.

A Well, if I went into a customer's house and they don tell me where I bought a set -- they come down here and say, "Look, I think so and so" --

A Berkley Avenue.

Q Now, what's another one that you worked on that Vernale told you?

A (No response.)

Q We're going to find out, Ed, and I want you to come clean with me so the Lieutenant --

BY LIEUTENANT RAGAZZI:

Q Look, Ed, let me tell you what we're doing here.

See if they've got the coffee there.

We'll take a break for coffee.

(A break was taken.)

BY LIEUTENANT RAGAZZI:

Q O.K., we're going to continue on now with this interview.

Now, there is one other set that you did handle that you bought from Charlie Vernale and subsequently sold, is that correct?

A Yes. It's located in Wolcott, but I can't recall the name. I can show you where the house is, but that's it.

Q O.K.

A That's about all that I can do.

Q O.K. Do you remember what you paid for the set?

A Well, that would be --

Q What you --

A a 19-inch table model, portable, classified ads, which was around $200 I believe.

Q You paid Charlie for it?

A Yeh.

Q And what did you sell it for? How much did you get for it?

A About $350 or $325. I can't remember exactly which. ARound there.

Q I see. O.K. Now, this woman lives where, in Wolcott. Do you remember her name?

A I can't recall the lady's name. No, she never called back after.

Q I see. And you never had any trouble with that set?

A No.

Q She made contact with you at the store?

A No, she never called the store.

(Telephone rings.)

LIEUTENANT RAGAZZI: Yeh.

Go ahead, Ed.

Let's be completely honest on these things and let's get them all -- let's get the whole bit, Ed. Believe me, you're so much better off by telling us the whole truth. And, actually, as I say, we're only after the truth, nothing else, believe me when I tell you that.

A Yeh.

Q Are there any other sets, Ed, that you've handled besides this Magnavox?

A No, that's the only set.

Q All right. You're willing to take one of our men back and show him where this house is?

A I'll show you where the house is.

Q O.K. Now, there's other sets that you've adjusted for Charlie.

Do you remember who the people were, any names that you have?

A Well, I gave you some of the names here.

Q Yeh. Is there anything other than these that you've given us?

A I gave you the name of Butch's Restaurant down there on South Main.

Q You adjusted a set there?

A Yeh.

Q Yeh. Anything else?

A Well, the man also has one in his house, but I didn't adjust that.

Q The owner of Butch's?

A That's right.

Q Did you sell him any of these sets here?

CAPTAIN BISHOP: Friday, February 21, 1969, approximately 2:20 P.M., this is Captain Bishop, I'm about to start an interview with one Edward Miller, who has been interviewed previously.

Present are Lieutenant Ragazzi and Sergeant Courtney.

And, Mr. Miller, you know of your rights?

MR. MILLER: Yes, you said that the last time.

CAPTAIN BISHOP: Are you fully aware of those rights?

MR. MILLER: Well, yes, that's right.

CAPTAIN BISHOP: And need I reiterate them here?

MR. MILLER: No, you don't have to.

CAPTAIN BISHOP: All right.

You waive those rights?

MR. MILLER: Well, let's say I'm willing to cooperate with you.

CAPTAIN BISHOP: Yes. All right.

EXAMINATION BY CAPTAIN BISHOP:

Q Mr. Miller, since we talked to you last -- you know we developed some leads talking to you, and we have pursued those leads, and it seems that some of these people are telling

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us that you, in fact, had sold them sets, and we want to try and get that ironed out.

A Well, --

Q Namely, --

A -- the sets I told you I sold were the ones. I haven't sold to any of these other sets. They were servied by me only.

Q Only?

A That's right.

Q And would that apply to a set you sold Mr. Lanza?

A I didn't sell any set to Mr. Lanza recently.

Q He insists that you did.

A I sold him a set maybe five years ago. That was the last time I sold him a new television set.

CAPTAIN BISHOP: Do you have Mr. Lanza's statement there?

I just want him to know that I'm not fabricating this.

A Did you tell Mr. Lanza that I told you to go up there and inspect his television set?

Q No. No. But we did tell him that you told us that you did not sell him a set.

A Not recently, no. No. The only set I sold him was about five years ago.

Q Well, he says in August of 1967.

A No.

Q He says, "I purchased a Motorola console color set from Edward Miller of Miller & Fellin TV Service, 1 Hill Street, Waterbury."

And then he goes on to say, "In the summer" -- and I'll let you read this, too -- "In the summer of 1967, possibly in July, Miller was servicing a TV set in my basement" --

A That's correct. Yeh.

Q "- - and I told Miller if he could get a color TV set for my living room, located on the first floor, and give me a deal, I would go for one. I told him I wanted a Motorola color TV."

Did you have such a conversation with him?

A No. I was servicing a set in his basement and as I finished the set, he asked me to come upstairs and adjust another television set that he had just purchased, upstairs, in his living room.

Q He already had the set?

A He already had the set in his house and it was hooked up to a pair of rabbit ears.

Q Was it a Motorola?

A It was a Motorola set, yeh.

Q And did you have any further conversation with him

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about that set?

A Well, --

Q Where he got it?

A -- he didn't say where he bought it. He just said he got a good price on a television set.

Q You positively did not sell it to him?

A I did not sell the set, no.

He did mention his brother-in-law in a round-about way. As I was there, he was talking to somebody else who was there.

Q Who else was there?

A Well, there was another man there and his wife was there, but I can't think of the other man's name, because I did not know him.

Q Well, do you know of any reason why he would say he bought it from you?

A I've known him for some time, but I can't think of any reason why he'd buy it from me because I didn't sell it to him.

Q Well, let me go on with this and see what your reaction is to some of these other things.

And you said that was July he was talking to you, you were down in the basement fixing his --

A Well, it was during the summer. I don't remember

exactly which month it was.

Q It was 1967?

A But he would have a service order for his set in our records there.

Q Do you think it was right though about the summer of '67?

A I could tie it down exactly there.

Q All right. Would you do that for us after you leave today?

A Just write the date down there, --

Q All right.

A -- and I'll check it back with the service orders.

Q All right. But getting back to his statement now, --

A Well, his statement that I was in the cellar repairing his set is correct.

Q All right.

A But his other part of the statement was not correct, that I sold him a set.

Q All right. Now, I want to see how much more of his statement is correct or incorrect, as far as you're concerned.

"Approximately one month later," he said, after this conversation, "Miller called me by phone and told me he would give me a set for $500. I asked him if it was a new set

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color, and a wood cabinet. Miller said 'yes' to this question, and I told him to bring the set up."

A He never called me, no.

Q Anything like that?

A He never called me.

Q And nothing like that ever occurred?

A (No response.)

Q He says you called him .

A No, I didn't call him.

Q All right. Then he said, "One evening, I don't remember the date, I think it was in the month of August, 1967, Miller delivered a set to my home on 371 Bunker Hill Avenue. It was a Motorola 23-inch screen, color, in a walnut cabinet console."

Did you -- did that happen?

A No.

Q He said, "I paid Miller $300 in cash on delivery."

A That part is incorrect. He didn't pay me anything, because I didn't deliver any set.

Q He said, "I didn't get a receipt from Miller on the purchase, and I didn't ask him for one, because I thought he was knocking down on his partner."

A That's not correct.

Q So, what we've read of Mr. Lamm's statement so far

is incorrect, except you did repair a set in his basement one time?

A That is the only part of his statement so far that's correct. That's right. And it was while I was repairing that set that I first found out he had another set upstairs. I never knew about it until that particular time.

Q I just want to read one more part of it here.

"At no time did Miller tell me that the set I purchased from him for upstairs living room was stolen."

A I never said any such thing. I never had occasion to.

Q And he said, "There was no other contact between Miller and myself in these transactions."

Now, of course, based on your statements, that has to be a fictitious statement anyway.

A That's right, it is a fictitious statement.

Q You never sold him the set?

A I never sold him the set.

Q But you were there repairing a set?

A I was there repairing his regular set, which I originally sold him, and subsequently he had me go upstairs and adjust the other one, which he already had.

Q I want you to make sure. Just look at this. You can see that this is Mr. Lamm's statement.

A Yeh.

Q How, you've read Mr. Lanza's statement?

A Yes, I did.

Q And the things that I related to you are, in fact, in that statement?

A That's right.

Q There are other things in the statement which concern you and your partner and business which I didn't think were pertinent to my line of questioning, that's why I didn't --

A Yeh.

Q -- read them to you.

But, now, he has you selling him a set, and he has --

A You mean the transactions.

Q -- you receiving $500 from him on this stolen set.

A Well, that's incorrect.

Q That's incorrect?

A See, any transactions with Charlie Lanza, my partner knows about also.

Q Why do you think he would ever tell us this, Mr. Miller?

A Well, I don't know, unless he's trying to cover up something. That's the only thing I can think of.

Q What could he be trying to cover up, who really gave him the set?

A Possibly. I have no way of knowing.

Q Do you know how he got that set?

A I don't know how he got the set, no.

Q But it was there?

A It was there in his living room (inaudible).

Q You were not asked by anyone to service that set, other than himself; other than Mr. Lanza?

A That's right, yeh.

Q No one else asked you to service that set?

A No, nobody else did.

Q All right. So much for him for now.

Mr. Griffin tells us that he purchased a set from you.

A No, that's also false. Mr. Griffin I didn't even know until he called me to come up there and adjust his set.

Q How long had he had the set when you went there to adjust it, do you know?

A Well, he didn't tell me how long he had it. It looked like a new television set, but he did mention something about D'Agostino.

Q Mr. Griffin did?

A That's right. He had gotten him the TV set.

Q He told you that?

A That's right. And Mr. D'Agostino, Mr. Griffin said,

wanted me to come up there and adjust his, too, which I didn't do.

Q Oh, Mr. D'Agostino wanted you to go up and adjust Mr. D'Agostino's set as well as Mr. Griffin's?

A Mr. Griffin said that Mr. D'Agostino also wanted me to adjust his.

Q I see. And we're talking about which D'Agostino?

A The one that lives up on Dan Parker Drive or something.

Q I don't know where it is.

A North end.

SERGEANT COURTNEY: Valentino Drive.

LIEUTENANT RAGAZZI: 33 Valentino Drive.

A Yeh, that's right. It's right in back of a Shell gas station, I believe.

LIEUTENANT RAGAZZI: That's it exactly.

A It's an apartment building.

LIEUTENANT RAGAZZI: That's correct.

Q But you never went to service his set?

A I never had adjusted -- I told him I didn't have time to do it.

Q Why are these people telling us that you sold them sets? That's the point I'm making here.

Is there something connected here that we don't

know about or haven't uncovered yet?

A No, I did not sell these people any television sets. As I say, they did call for service.

Q Does it look like they want to make you a fall guy?

A I don't know. It could be that. That's the way it look

Q You didn't sell either one of these two people a set?

A No.

Q You never sold D'Agostino a set, did you?

A No, I never sold him one either.

Q Well, this is Thomas Griffin's statement. He said that he met you -- do you know Mr. Griffin, incidentally, other than the fact --

A I don't know him personally, outside of when I saw him at his house. I did find out through my son that he did work down at the boys club from time to time.

Q Did you ever see him down there?

A No, I never saw him down there. My children have seen him , because, I mean, he's a swimming instructor.

Q He says in his statement, "I met Edward Miller at the boys club on East Main Street about two years ago."

Did he ever meet you in there?

A I never met him at the boys club, no.

Q He said, "One evening" --

A I have been down there to pick up my children, because they go there maybe once a week -- in fact, two of them are down

there today, being a school holiday.

Q He says, "One evening" --

A But I wouldn't know him prior to that if I saw him at the boys club, because I didn't know him.

Q He said he had a conversation with you where you discussed each other's jobs.

Did that ever happen?

A NO.

Q O.K.

A The only conversation I could have had with him was at his house when I was fixing his television set.

Q That's all?

A That's all.

Q Well, let me just read another excerpt, because I want to get it straight.

A Yes.

Q "In the course of our discussion," he's talking about you and he, "I learned from Miller that I could purchase a color TV console type from him at a good price, in the area of $400."

Did you ever discuss that with him?

A No, I never did.

Q With the price, and plus the cost of an antenna.

Did you ever discuss the cost of an antenna with

him?

A No. The only time he discussed an antenna was when I was up there servicing his set, he couldn't get any picture on the set, it was very snowy, so I went outside and found the wires. They weren't even connected to the antenna. They were connected to the mast. There was a U-bolt -- evidently, he put up the antenna himself and he fouled up the connections, so I had to go up there and straighten it out for him.

Q O.K. Continuing in the same paragraph, he said, "For this price, he" meaning you, "told me I would get installation service and periodic service on the TV free."

A No.

Q You never had such a conversation?

A No, I never discussed that with him.

Q And he said he thought it over for a while, discussed it with his brother-in-law named Joseph Taglia.

Do you know him?

A No, I don't know him.

Q Do you know of him?

A I never met him.

Q Do you know of him?

A I don't know of him, no.

Q You never heard of Joseph Taglia?

A I might have heard the name, but I never met the man,

to my knowledge anyway.

Q Where did you hear his name; in connection with this business?

A No, but the name does sound familiar. I might have heard it in the course of --

Q He's a carpenter. Does that help you?

A No, it still doesn't help me.

Q Well, he said he discussed it withhim --

A (Inaudible).

Q Mr. Griffin says he discussed it with his brother-in-law Joseph Taglia and thought it was a good price, so on and so forth, and he then decided to get the set from Edward Miller.

A No, that's wrong.

Q "In the late fall of 1967, I made arrangements with Edward Miller to purchase the TV set."

A That's wrong.

Q That's incorrect?

A That's right.

Q "He told me," meaning you, "it would be a Motorola color console type. The arrangements were made at the boys club."

A No arrangements were made at the boys club.

Q This is all false?

A That's all false.

Q As far as you're concerned?

A That's right. I never talked to Mr. Griffin at the boys club, and I never saw him down there.

Q All right. Let me continue, because I've got to get this straight.

"One evening, I don't know what day but it was in the fall of1967, Miller brought a Motorola color console type to my home on 332 Bunker Hill Avenue, Waterbury."

Did you ever do that?

A Bunker Hill Avenue? That's Mr. Lanza's address.

Q Where is -- where is --

A Griffin lives up there north of Berkley Avenue I believe.

Q Oh, 332 Berkley Avenue?

A Yeh. And the other man that you discussed --

Q Right.

A -- lives up on Bunker Hill Avenue.

Q O.K. But I'm talking about Griffin at Berkley Avenue.

A Yeh. Right.

Q He says you brought a color TV there.

A No, I never did.

Q Never. And he says the cost of the TV was $400 and the cost of the new antenna was $65 or $70.

A No, that's false.

Q "I don't remember how I paid Miller, by check or cash."

He never paid you anything, did he?

A No.

Q Did he pay you for service call?

A The only payments received from him were for service on a television set which he had, which he always paid by check.

Q And he called you for that service?

A He called the store for service, that's right.

Q O.K. And that's legit service?

A And I have a record of his calls through the store on the store's service orders, and you always charge the regular rate and he always paid the regular rate on his television set.

Q He says, "Miller did not tell me that the TV set was stolen."

A I never said any such thing.

Q Well, he says he did not tell him -- "Miller did not tell me that the TV set was stolen." He's just making a flat statement there.

A Yeh. Well, that statement --

Q Implying that if it was stolen and you knew it, you didn't tell him, if you sold it to him.

A Yeh.

Q Well, that's basically what he says as it relates to you.

A I don't know why that he would say that I sold him a set, unless they're trying to cover up somebody else that they got it through.

Q Well, let me ask you -- you know, you've been rather cooperative with us --

A If I would have sold any sets, I would have told you, because the first day I come in here, you asked me if I bought any sets from Charlie Vernale, and I told you. If I was trying to hold something back, I wouldn't have said anything. I try to be cooperative, if I can.

Q Now, you did tell us about one set you claim you sold yourself to a Mrs. MacIntosh?

A Yeh, there was a set --

Q Wolcott.

A -- to a MacIntosh out in Wolcott there.

Q Right. But she tells us that you didn't sell it to her.

A I was.

Q What's the story on that?

A I don't know --

Q Did you sell it to her?

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A That set was sold, and I repaired it out there. I bought the television set, but I think she paid Charlie Vernale for it.

Q Who delivered it?

A I didn't deliver that set out there. Charlie Vernale delivered it.

See, originally I had the set for repair, it wasn't working right, and I think it had a burned out focus unit in there, so I fixed it, and Charlie asked me if I wanted the set, and I told him at the time that I thought I did, but he said he had a customer for it right away, and if I'd bring it back, he'd take it up there.

Q Well, did you, in fact, buy it from him?

Had you bought it from him at that point?

A I didn't give him any money forit, no.

Q No.

A I brought it back to him, then he delivered it up to the party up there and had me go up and adjust it. Then he paid me money for adjusting the set up there.

Q Did he tell you how he had come to have that customer?

A No, he did not.

Q Do you know how he came to have that customer?

A I don't know anything about that, no.

Q So, in fact, though, you did not sell it to her?

A Well, originally I took the set from him,--

Q Yeh.

A -- it was defective, it wasn't working.

Q Yeh.

A That's how I happened to have it. And he asked me if I wanted to buy it, and I told him, "Yes." But he wanted money forthe set, which I didn't have, so I brought it back to him, and he brought it right up to these people, as far as I know.

Q Did you get -- did you realize anything from the sale of that set? Did Charlie give you anything?

A I didn't realize anything from the sale, outside of the repair on it. He paid me I think it was $25 for the repair on it, because it needed a new focus unit in and some other work.

Q So when you told us that you sold the set to Mrs. McIntosh, --

A Well, that part there was wrong. Actually I had the television set, but I didn't make the actual transaction.

Q Well, you see how important detail comes.

A Yeh.

Q It becomes, when we're talking --

A Well, you asked me if I knew of anybody that had the

sets, and I was trying to think.

Q That's all right. I'm just trying to clarify it.

A Yeh. All right.

Q You said one thing -- these people said one thing about you, and we're trying to get that square, and now you said you had sold this woman a set, and we're trying to get that squared, because she said, "No, you didn't sell it." In fact, "Mr. Vernale delivered it," she said.

As far as you know, he did?

A As far as I know, he did deliver the set, that's right.

Q But you weren't with him?

A I wasn't with him, no.

Q But he told you to service it?

A Yeh. In fact, he brought me up there in his car to service it afterwards.

Q Did he go in the house with you?

A He did, yeh. I didn't have any transportation.

Q And that would have been what, in relation to when the sale was made, the next day?

A Well, he didn't say. Possibly within a day or so afterwards.

Q You don't know?

A Somewhere around there, right.

Q Sometime after he made the sale?

A That's right, yeh.

Q You and he went up and you serviced it?

A Yeh, that's right.

Q He drove you up there?

A That's right.

He told me that set I fixed for him wasn't working right, and I had to go up there and adjust it, and I said, "O.K.," I'd take care of it if it wasn't right.

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BY CAPTAIN BISHOP:

Q Well, did you ask Bochicchio then about that set, "Is that one that you got about the same time your brother-in-law got a set?"

How do you know it's one of the two sets purchased?

A Well, it was said at his brother-in-law's house down there.

Q Oh, he also described the sets at the time, his brother-in-law, or did he say it was like the one you were working on for him, or what?

A Well, they said they got two Motorola color TV sets, that's how they got a good price, and they could not beat the

price of what they got it for, because I questioned him, I said, "Gee, I've been doing business with you for years, why didn't you buy it from me, as you bought your other TV set?" He said he could not buy it from me because I could not compete with the price he was getting it for.

Q And from that, did you have any idea what he meant by that?

A At the time, I didn't, no. Later on, I did.

Q Did you have reason to learn where he got them, later on?

A Well, from what has been going around, they bought them from Charlie.

Q Oh. Is that recent now, since we've been here, or is this some time ago you heard that?

A Well, this goes back to last fall or so.

Q Somebody told you they got them --

A Somebody did, that's right.

Q Is this somebody that really knows, or just guessing?

A I don't know, to tell you the truth.

Q Is it a friend of yours who told you?

A I'm trying to think of who it is, but when you go in different places, you meet quite a few people, and sometimes they get talking.

Q Well, we're interested in knowing. Of course, Mr.

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Q Now, we were checking out one other place, a couple other places actually, that you told us were -- where you had serviced sets.

A Yeh.

Q And one is a negro man -- I forget the name of the street he's supposed to be on.

What street is it?

SERGEANT COURTNEY: Willow and Water; on the corner.

Q Is that familiar to you?

A Well, I was up there once and I repaired a Dumont television set up there. It was quite a large house with a big tower out there now. At the time, he didn't have a tower on it. That's theplace up there. I can't think of the man's name.

Q Was that the set that you were talking about? You repaired a Dumont there?

A Dumont console, that's right.

Q Who sent you there?

A That was Mr. Vernale that sent me up there.

Q Do you have any knowledge that that was a stolen set?

A No, I did not at the time.

In fact, that set didn't even look like a new television set. It looked like he had it for some time. There was dust on the inside of his set.

Q Have you repaired or serviced any other set in that house?

A No, that was the only television.

Q How recent have you been there?

A This goes back about two years ago now.

Q That's the last time?

A That's right.

In fact, all these sets were all around the same period of time. All during the late spring or summer --

Q There's a hell of a lot more, Ed.

A Pardon?

Q There's a lot more sets from right around that time that we're trying to locate.

A Well, if there is, I don't know about them, because I -- during the course of the business day, I don't get through work until real late at night, and this goes on every day -- very seldom -- the only time I had a break was during the snow storm. So, actually I don't have any time to go out and service these sets. Maybe I can service one every once in a while here and there, but that's all.

Q Do you know Carmine Marino?

A Carmine Marino? No, I don't.

Q Carmine Marino.

A No.

Q You never serviced a set for him?

A The name does not sound familiar at all.

If I had serviced a set under his name, I would have remembered it.

Q Do you know a man named Gusti? G-u-s-t-i.

A It --

Q Chase Avenue.

A -- doesn't sound familiar either, no.

SERGEANT COURTNEY: May I say that's also pronounced Guiotti.

That's the way they pronounce it around here.

CAPTAIN BISHOP? Oh, yeh.

A No, it doesn't sound familiar at all.

Q How about Chateau Royale, did you ever service a set there?

A I did go down there once for an adjustment of a television set there.

Q Color set?

A I believe it was a color, yeh. I don't know the make of it.

Q Do you know where it was located in the place?

A Oh, boy, --

Q Did Mr. Vernale send you there?

A Yeh. In fact, he took me down there to adjust the TV set because a lady that also worked down there had one down the street for adjustment.

Q What's her name?

A I don't know her name. That was the lady that lived on Orange Street. They had a small table model portable color set, RCA.

Q And Charlie brought you down there, too?

A That's right. Well, I walked down there, because it's right down the street --

Q But, I mean, did Charlie make it known to you where that set was?

A Well, then I got down there, the lady said where she lived.

Q Oh. She was employed at the Chateau Royale?

A That's right.

Q But Charlie had nothing to do with that set, as far as you know?

A I couldn't tell you because I don't know, but the lady said she wanted it adjusted, so I went down and did that.

Q Well, did Charlie indicate -- did Charlie know this lady?

A I believe he did, yeh. I never saw her before until I went down there, and I haven't seen her since.

Q Was the one that you repaired at the Chateau Royale a floor model type or was it a portable, or was it sitting up on a --

A They generally have a table model. I've never seen a console in a barroom yet.

Q Yeh. So it would be more like a table model --

A That's right.

Q Do you think that's what this was?

A It seemed to be a table model that you could screw legs on, a consolette. Some table models come with legs. You can use them either way.

Q You're pretty certain though it was a color set?

A Yeh.

Q Have you ever serviced a set in Di Primio's

Restaurant?

A Di Primio's, no.

Q Have you serviced any sets that you haven't told us about that, you know, are connected in this investigation, or you have reason to belive are?

A Well, I service a lot of television sets, but if you don't realize they would be connected with this, you can't tell you about them. Any other television sets I might have serviced would be recorded down on service orders, which I think you've already checked through anyways, that we have for the past couple of years.

Q Yeh. But I'm talking about sets that Vernale steered you to.

A No, these are the only ones that I know of that he asked me to adjust or there people called me in reference to him.

Q Have you been contacted by anyone since we started talking to you about this investigation?

A Nobody said anything to me at all, no.

Q Are you sure, Ed?

A Positive, yeh.

The only body that said anything to me was my partner back in the store, and then Sergeant Courtney called me the other -- no, it was the day before yesterday, down at

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store, and that's all the calls I received in this investigation.

Q Did you ever fix a TV at the fire house?

A Fire house? No.

Q Ed, I want you to really think about this now.

I know you've been --

A Well, I would remember it if I serviced one at the fire house, but we haven't had any -- I haven't had any either -- firemen as customers. There's only one that I can remember, on Walnut Street, and he purchased a set through my partner over at the store.

* * * * *

Q Are there any others, Ed, that we should know about before we, you know, get people telling us about you?

You know, that's my point. These people are apparently ready to let you hold the bag, so to speak.

A From what you show me here, it certainly looks that way.

Q Yeh. And I was wondering whether or not there are other people who are going to do that as we go along here, whether or not we should know in advance.

A Well, these people I've told you about, that I've done service for over a course of years for them, so they would know me. Anybody else that doesn't know me, I don't know how they can say that because I don't know them. But they might have figured I've done their work, so they could say that I sold them the television set, which I didn't do.

Q You haven't sold -- you didn't buy any more from Charlie and re-sell them, other than those you told us about?

A No, just those I told you about. In fact, at that particular time there, I even stopped taking telephone calls from him afterwards. That's why all these sets all fall around the same period of time. He used to call up and ask for me and then hang up if I wasn't in the store, and I told him if he calls down there again, tell him I'm out somewhere, because I didn't want to talk to him.

Q Why didn't you want to talk to him?

A Well, at that time other people were talking to me, and from what they said about Charlie Vernale, it wasn't very good, that I'm be implicated, or something if I kept on, so I didn't have anything to do with him. I said, "That's it."

Q Well, you know, I hope that you're being perfectly

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frank --

A Well, I'm trying to be frank with you. If I had anything to do with the sale of these other television sets, I would have told you in the first place.

Q Let me ask you a couple more places here.

Butch's Restaurant, did you ever service --

A The man that runs Butch's Restaurant I met over in Charlie's place, over there, I was servicing one of the TV sets he had in the house, and he said he wanted me to adjust the one down in his store and one at his house, and I told him if I had time, I would, but I never did go down his place.

Q You never did?

A No.

Q Do you know his name?

A I believe it's Rusy.

Q Rusy?

A Yeh.

Q You know how to spell it?

A R-u-s-e-y, I believe.

Q Did you see him at Charlie's on many occasions?

A Just one occasion there.

He told me about a set at his restaurant and one he had in his house. In fact, he wrote his house address down.

Q Where was that, do youknow?

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EDWARD MILLER'S GRAND JURY TESTIMONY
(PORTIONS DISCLOSED)

E D W A R D A. M I L L E R , J R . , called as a witness on behalf of the State, being first duly sworn, testified as follows:

THE REFEREE: Would you tell me your full name, please?

THE WITNESS: Edward A. Miller, Jr.

THE REFEREE: All right.

Please proceed, gentlemen.

EXAMINATION BY MR. MCDONALD:

Q Now, Mr. Miller, I ask you first, preliminarily, of course, you know Charlie Vernale?

A Yes, I knew him in the past, yes.

Q And on occasion you had repaired television sets where he gave you the lead to repair the sets?

A That is right, yes.

Q And also in the past, you bought sets from Vernale?

A This goes back about two years now.

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Grand Jury Testimony of Edward Miller Portion not Turned over G/S testimony, E Hill

BY MR. MCDONALD:

Q You met Paul Moynahan at Vernale's house?

A That is right. One day I was over there fixing a television set.

Q Pardon?

A I looked at Mr. Vernale's set one day, and Mr. Moynahan was there.

Q When you were examining Vernale's set?

A That is right, yes.

Q Now, you never had any arguments or words with Paul Moynahan?

A No. In fact, I never talked to the man outside of that one time in his house, and that one time up at Mr. Vernale's house. That is the only time.

[redacted]

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BY MR. MCDONALD:"

Q Now, with respect to the set, the chassis which is shown in State's Exhibit 11. You did examine that set at the Terryville Garage, did you not?

A I did, yes.

Q And it was smashed up?

A Yes.

Q Now, was there more of the set there than just this, justthe chassis?

A Yes. There was a face plate there with the front of the cabinet attached to it, the face plate of the picture tube.

Q And it was a maple cabinet?

A A maple cabinet and face plate of the picture tube itself was smashed.

Q This set was thoroughly smashed up?

A That's right, it was, yes.

Q And otherwise, if it hadn't been smashed up, this set was or appeared to be in good working condition?

* * * *

EDWARD MILLER'S GRAND JURY TESTIMONY
(PORTIONS NOT DISCLOSED)

Q Isn't it true that you repaired quite a few television sets that Charlie Vernale sold to people?

A Well, different people would call me up. They didn't say where they got the set, but I assumed Mr. Vernale sold it to them at one time or another.

Q Did you repair a set for people by the name of Griffin?

A Oh, yes.

Q Who were related to Officer Nick D'Agostino?

A That is right, yes.

Q And for whom else did you repair sets?

A Mr. Lanza.

Q Charles Lanza?

A That is right.

Q And he had a stolen set?

A I believe they say it was stolen. I don't know if it was or not.

Q He claims he bought that set from you.

A He didn't buy it from me.

Q He didn't buy it from you?

A I sold him a set a few years prior to that, a Motorola that he has in the basement. The set he had upstairs in the house, he didn't buy it from me.

Q Well, he had a set that was stolen from Deep River in the same break where other sets were sold, for instance, to Nick D'Agostino, by Charles Vernale.

A I see.

Q Did you repair or look over TV sets for any other individuals?

THE REFEREE: Let's see. I am just trying to look at it. Which column would be the best?

MR. MCDONALD: The final receivers.

A Oh, I repaired a set for Mr. Zollo there, too.

THE REFEREE: Who?

THE WITNESS: Zollo.

BY MR.SECOR:

Q That is Larry Zollo?

A That is right.

Q The alderman?

A That is right. I didn't know who he was at the time.

Q Were you referred to him by Mr. Vernale?

A That is right, yes.

Q Did Vernab call you or did he call you?

A Mr. Zollo called me up and Mr. Vernale, I think, also called me, too, about the same set, for me to go up there and fix it for them because it wasn't working right or something. And I also repaired a set for Mr. Bochicchio.

Q There are a number of Bochicchios. Do you recall which Bochicchio it was or what street he might have lived on?

A This was the one on Shadowood Road, Bunker Hill Avenue.

Q He is a police officer?

A Yes.

Q Isn't he out in the hallway?

A As a matter of fact, he was.

Q Valentine Bochicchio?

A Val.

Q Was that a little portable set?

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sets over ~~his house~~. He had quite a few apartments over there, I guess, he rented, also. And I didn't realize this.

Afterwards, somebody was telling me he might have some stolen sets there.

* * * *

You mean the garages next door?

Q Yes. With the apartments over it.

A Well, I went up to the apartment upstairs and repaired a phonograph up there, and I never did see any merchandise, or anything like that.

Q You never saw any TV sets, for example, in the garage that was below these apartments?

A No, I never saw the garage full of television sets when I was there.

Q Did you have any conversation with Larry Zollo when you went to his house?

A He wasn't even there at his house. I believe it was his wife that answered the door, and I went in and adjutted the set and left.

Q Do you remember when that was?

A Well, I would say it would be sometime in the same year, the spring or summer of 1967, over that period of time.

Q Sometime in 1967?

A That is right.

Q Well, our records indicate that that was an Admiral color set.

A I believe it was an Admiral.

Q That you repaired at Zollo's, and that was taken in a break that occurred on or about 8/7/67.

A I see.

Q Which would be a month or so after, you know, your recollection was.

A Well, it would be sometime in the summer. As I say, I don't know the exact time because I didn't write it down or anything.

Q What kind of charge did you make against Zollo? I mean, did you send him a bill?

A No, I didn't send him any bill at all. Mr. Vernale paid me for adjusting that set.

Q Mr. Vernale paid you?

A That is right.

Q For taking care of Zollo's set?

A That is right, yes.

Q Do you remember how much it was?

A It was $15, also.

Q I see. And Vernale had sent you to Zollo's to take care of it?

A That is right. Mrs. Zollo also called me up on the telephone. She must have received my telephone number from Mr. Vernale.

Q But did Vernale get in touch with you to go to Zollo?

A He also asked me one time he saw me, to go up and

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tell you needed work, that other people had in their possession?

A No, I didn't have any arrangement with him. I asked him before, I said, "If you know of anybody that wants any television repair work done, I could do it for them." I said, "That is what I am in the business for."

He said, "If I run across anybody, I will give you a ring or have them call you."

And I assumed that is what he did, is have these people call me, and a lot of times he called himself, for me to go up there and fix a set for them. So, I assume these were all friends of his, people that he knew, because a lot of times that is the way you get business. You might fix a set for somebody and they recommend you to a friend of theirs or a relative of theirs or something like that.

THE REFEREE: Is there anything else that you know of that you think we ought to know?

MR. MCDONALD: Well, I think there is something else, your Honor, that we haven't gone into, at this time.

BY MR. MCDONALD:

Q You bought a couple of sets from Charles Vernale yourself?

A That goes back during the same period of time.

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THE REFEREE: By that you mean you paid in excess of $300, in that neighborhood?

THE WITNESS: That is right.

THE REFEREE: Were you suspicious at all about these being stolen?

THE WITNESS: At the time I was not suspicious, no, but afterwards, about six months later, I got rather suspicious about it from what people have told me around. At the time, though, I didn't think anything of it.

THE REFEREE: If you bought directly from the factory, what would they have cost you, if they were new?

THE WITNESS: Well, it might have cost me about $50 more, in that bracket there. But I thought he was giving me a break at the time, in selling me these television sets at that price, because I did some service work for him over there, and I thought that was the reason that he was doing it.

BY MR. SECOR:

Q Did you charge him for the service work you did for Charlie?

A I charged him a rate. I didn't charge him a fabulous

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EDWARD MILLER'S TRIAL TESTIMONY

E D W A R D M I L L E R, called as a witness on behalf of the State of Connecticut, being first duly sworn, testified as follows:

THE CLERK: State your full name, please.

THE WITNESS: Edward Miller.

THE CLERK: And your address?

THE WITNESS: 19 Floral Nook, Waterbury.

THE CLERK: Please be seated.

DIRECT EXAMINATION BY MR. GAFFNEY:

Q Mr. Miller, what is your occupation?

A Television repairman.

Q And for how long have you been so employed?

A About seventeen years.

Q WHere is your present place of business?

A Miller & Fallin TV, 45 Colley Street, here in Waterbury.

Q Is that here in Waterbury?

A Yes, it is.

Q Mr. Miller, in the course of your occupation as a TV repairman, did you have occasion to repair a television set for the defendant, Mr. Paul Moynahan?

A Yes, I did.

Q Showing you State's Exhibit I, a photograph, would you identify that photograph, Mr. Miller?

A Yes, this is the set I repaired in his house.

Q What was the matter with the set, do you recall, Mr. Miller?

A The set had no sound on it.

Q I beg your pardon?

A The sound was completely out.

MR. HENNESSEY: Coul' we find out when we are talking about here?

BY MR. GAFFNEY:

Q Do you recall when it was, Mr. Miller?

A To be honest, it was on a Sunday morning and that would be about 1967. It would be during the summer.

Q ANd how do you know that it was during the summer?

A Well, Mr. Moynahan wanted to see a baseball game on the television set and he called me on a Sunday morning, which I remember, to come up and repair it at his house.

Q And the set was in his house?

A That is right, yes.

Q I see, and did you, in fact, perform repairs in regard to this set?

A Yes. I went up there and he had the set over in the front room, in a small room in the house, a sun porch, I believe it was, and I had to go in there and take the set and turn it on its side and take the bottom plate off it in

order to find the trouble.

Q Was the defendant, Mr. Moynahan, home on this Sunday morning?

A Yes, he was home.

Q Did you see him there?

A I saw him when I came into the house, yes.

Q I see. Was he present when you performed the repairs on the television set?

A Well, he was in the house although not in the same room all the time I was working on it.

Q I see. When you say you removed a plate, would you step down here, Mr. Miller, and showing you State's Exhibit X, is that plate amongst these?

A This is the plate here.

THE COURT: Just a minute, please, Mr. Miller. You will have to keep your voice up because your voice isn't carrying up to the bench here. I am sure the jury is not hearing you.

A Yes. This is the plate that was on the bottom that I had to remove to get at the sound coil.

MR. GAFFNEY: For the record, we are talking about State's Exhibit X-3.

You might stay down here, and indicate for the jury just what work you performed with regard

to this TV set.

BY MR. GAFFNEY:

Q First, I will ask you: Do you recognize that chassis?

A This is the chassis that was in the television set that I repaired at Mr. Moynahan's, yes.

Q And do you recognize that reconstructed television set back there?

A Yes.

MR. GAFFNEY: And by that, we have reference, your Honor, to State's Exhibit K.

Q Now, with reference to the chassis, State's Exhibit 3 in evidence, Mr. Miller, would you point out to the ladies and gentlemen of the jury, perhaps standing in the back here, as best you can, just what work was performed?

A When I went to --

THE COURT: Again, Mr. Miller, you see, your voice is muffled. You will have to keep your voice up.

A (Continuing) Now, when I went to repair this set in Mr. Moynahan's house, this coil here had a shield around it, like this one here, and you couldn't see it from the top. You would have to get at it from underneath. This is the exposed part of the chassis. When you remove the plate off

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the bottom this is what you see.

Now, this is the coil, right here, that I repaired. I had to remove the wires off the coil. These had to be cut with a diagonal pair of cutters. These two were cut here and these two cut here.

Q How many cuts did you make, Mr. Miller?

A Well, there are four terminals on there and they were cut twice here and twice over here. At the tube socket there were four cuts made.

Q Did you cut all the wires that were attached to this particular coil?

A This particular one right here was not cut. It was left intact on the coil.

Q You left one intact?

A That is correct.

Q Why did you do that, sir?

A That wasn't needed to remove the coil out of the coil holder, the can that it was in.

Q In other words, you left that one wire attached?

A This one here was attached; that is right.

Q Did you sever all the other wires?

A All the other wires were severed for removal of the coil.

Q And did you, in fact, remove the coil?

A Yes, I did.

Q Now, how did you remove the coil?

A There are two little white locking pins here which hold the coil inside the metal can. I had to take a little screwdriver and gently pry those to free it so the coil would come out this way from the can it is mounted in.

Q So that you first pried two locking pins. Is that what you call them?

A THese two little pins here, yes. One here and one over here. Those are the locking pins which hold the coil inside the can.

Q I see. So first you pry or do you first make the cut?

A First you make the cuts and then you pry the coil out so you could work on it.

Q All right.

A I got the coil out and swiveled it in position and I traced the winding on there.

Q Excuse me. When you say you swiveled the coil out —

A Yes.

Q You didn't do anything with regard to the top shield; is that correct?

A The top shield is left intact on there.

Q Both the metal shield and the plastic shield; is that

correct?

A That is right. The coil is inside those.

Q I see. So you are operating underneath and you swiveled it out, the coil out?

A That is right.

Q And still attached by that one wire; is that correct?

A Yes, it is.

Q All right. Now, what did you do with regard to the coil?

A Now, once the coil had been gotten into position where I could work on it, I found it open on winding where the wires were broken on the coil inside.

Q What do you mean when you say "open"?

A Well, the wire inside is very fine wire. It is like a strand of hair, it is so fine. It is small enamel-covered wire. And I found the one that was broken on winding the coil. It was the top winding.

Q When that wire is broken, Mr. Miller, what effect would that have on the sound of the TV set?

A There is no sound when that wire is broken. The circuit is, in fact, open. It is dead.

Q I see. So what did you do to repair this?

A I took the soldering iron, the soldering gun that I had.

Q Excuse me, Mr. Miller. Go back and tell us about the soldering gun. What does that look like?

A Well, it is a small item for soldering. It is made by the Welder Company. It resembles a small gun with a tip on the end of it.

Q I see. How does it work?

A Well, you plug it in the electrical outlet and it will heat up on the end. You don't have to wait for any warm-up period. It heats up right away. I took the soldering gun and took some solder and tinned both ends of the wire.

Q Excuse me, again. What do you mean when you say you tinned both ends of the wire?

A Well, to get the wire in condition to solder it, it is covered with like enamel on there and you would have to heat it up and apply solder to each end of the wire. You melt the enamel out and so the wire is tinned.

Q So what you are doing is stripping away the covering?

A You are stripping away the insulation on both ends and applying a coat of solder.

Q When you strip away the coating, what then do you do, sir?

A Then I proceeded to join the two ends of the wire together. Now, this wire is very, very fine and so it takes a little while to do this and you have to be very careful that

you don't bend it, otherwise it will break right off because the wire is brittle.

Q So you put them together, you are splicing them?

A Splicing the wires together; that is right.

Q THen, after the wires are spliced, what next did you do?

A After the wires were spliced a piece of black plastic tape was applied around the top of the coil to hold it in place and then the coil is reinserted back into the metal can, the wires are soldered back on and then I applied power to the set to check the sound circuit. And then, of course, I had sound.

Q When you say you applied power, you plugged it in. Is that what you are talking about?

A That is right.

Q All right.

A ANd then I had sound on the set and I adjusted the circuit and put the metal plate back on the set and turned it right side up.

Q The metal plate you are talking about is State's Exhibit X-5 --

MR. HENNESSEY: X-3.

Q Excuse me. X-3. Is this the metal plate you are talking about?

A Yes, it is.

Q ANd this is the plate that you initially removed to get at the set; is that correct?

A That is right. That was put back on, the set was turned right side up and the picture and sound were now on, on the set, and the only other remaining work to be done on the set was adjustment of the black and white tracking, the color balance on there, and convergence and then the set was repaired.

Q Did you have a conversation with Mr. Moynahan at this time?

A Well, when I got the set working I told him to come in and look at it.

THE COURT: I am sorry, I didn't get the last answer.

(The last answer was read back by the reporter.)

BY MR. GAFFNEY:

Q And did he examine the set?

A He came in and looked at the set to his satisfaction and I told him how much the job would be and he paid me for it, which was $15.

Q Now, would you take a good look at that chassis that is State's Exhibit 8?

A Yes.

Q And with particular reference to the repair work that you have talked about.

A This area right here (indicating).

Q ANd can you tell us, sir, under oath, positively that that is the work that you performed on this set when it was in Mr. Moynahan's house?

A Yes, I dan. I can recognize my own work on it.

Q Is there any question in your mind about that?

A No.

MR. GAFFNEY: Thank you very much, sir. You may return to the stand.

Q Now, Mr. Miller, I would like to refer your attention to February 17th and 18th, also February 21, 1969. Did you have occasion to tell the members of the Connecticut State Police Department about your repairs to a particular TV set?

MR.HENNESSEY: I will object to that, your Honor, as leading.

MR. GAFFNEY: I will rephrase it, your Honor.

BY MR. GAFFNEY:

Q Mr. Miller, did you ever tell anyone about your repairs to the set?

THE COURT: The answer is yes or no: Did he tell anyone?

A Yes, I did.

BY MR. GAFFNEY:

Q Whon did you tell?

MR. HENNESSEY: I will object to that, too, your Honor.

MR. GAFFNEY: I will claim it. If your Honor pleases, I think perhaps the jUry should be excused at this time.

Your Honor, I would like to argue that this conversation is admissible.

THE COURT: The jury may be excused. Incidentally, we will take a short recess at this point so that as far as the jury is concerned, it will be about fifteen minutes.

(The jury leaes the courtroom.)

(In the absence of the jury:)

THE COURT: What is the basis on which you are making the claim of what he told the police department? Isn't that hearsay, Mr. Gaffney?

MR. GAFFNEY: Well, I will claim it is not, your Honor, because it goes to giving a description of this particular TV set.

I have a memorandum of law because I knew what is initially troubling us would trouble the Court, and I think it is quite clear under a line of cases which I will present to the Court, that such testimony is admissible.

We are not talking about the very truth of the matter stated, but rather, we are going to the state of mind of this individual and what he is reflecting Here. He is tracing and telling people this before the set is even found, if the Court please, just what repairs he did, and I would present to the Court and to the defense counsel this memorandum of law which supports our claim.

THE COURT: Do you have any Connecticut case?

MR. GAFFNEY: It is not a Connecticut case.

THE COURT: I am not going to waste my time at this time. I may later on, but at this particular time, in the absence of any Connecticut authority, Mr. Gaffney, I hesitate to let this in.

MR. GAFFNEY: Well, your Honor, I would like to then state at some length a case which I consider to be quite relevant to our position. I could cite McCormick and Wigmore on Evidence, as

well, your Honor, for this ground.

There is one Connecticut case which is not directly in point. However, I will claim it is related.

MR. HENNESSEY: I will withdraw the objection, your Honor.

THE COURT: Well, since the objection is withdrawn, do you still claim it?

MR. GAFFNEY: Yes, your Honor.

MR. HENNESSEY: I will say for the record I withdraw the objection.

THE COURT: What is the citation of your case? I would like to see your memorandum.

MR. GAFFNEY: Yes, sir.

MR. HENNESSEY: Might we have a copy?

MR. GAFFNEY: Certainly.

MR. HENNESSEY: I would like to see it, too.

THE COURT: Well, have you withdrawn the objection?

MR. HENNESSEY: I want to learn something. I am withdrawing my objection.

THE COURT: All right. We will take a short recess at this point.

(Recess.)

(Court resumed.)

(Jury enters the courtroom.)

THE COURT: You may proceed, Mr. Gaffney.

MR. GAFFNEY: Sheriff, would you please get Mr. Miller.

THE COURT: You may be seated, Mr. Miller. You are still under oath.

All right, Mr. Gaffney.

MR. HENNESSEY: Did your Honor want me to indicate for the record that I withdrew my objection to the previous question?

THE COURT: Yes.

MR. HENNESSEY: And did so after consulting with counsel, and do so voluntarily and freely as my own act and deed.

THE COURT: All right.

You may proceed.

BY MR. GAFFNEY:

Q Mr. Miller, with regard to this particular TV set, you indicated that you repaired it in the defendant's home. Is the defendant present in the courtroom, Mr. Miller?

A Yes.

Q Would you point him out, please?

A Yes. He is sitting right over there, Mr. Moynahan.

MR. GAFFNEY: May the record indicate the defendant has been identified by Mr. Miller, your Honor?

THE COURT: The record may so indicate.

BY MR.GAFFNEY:

Q Mr. Miller, you testified that you made this repair sometime in the summer of 1967?

A That is right, yes.

Q When is the next time you saw this TV set, this chassis?

A Well, the next time I saw that chassis was on April 1st.

Q Where was that, Mr. Miller?

MR. HENNESSEY: Excuse me. What year?

THE WITNESS: This wa the past year, in 1969.

BY MR. GAFFNEY:

Q In 1969?

A That is right.

Q I see. Where did you see it, sir?

A That was at the town garage in Plymouth.

Q I see. And just what did you see in the town garage in Plymouth?

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A Well, when the State Police brought me up there to look at the television set that they had found, they had fragments of the cabinet, and they had the television chassis on the floor in the garage.

Q They had this particular chassis?

A This particular chassis.

Q Had you had a conversation with members of the State Police regarding the repair of this set prior to your seeing it on April 1st?

A Yes. That was in February of the same year.

Q Now, what year is that?

A That was 1969.

Q February, 1969?

A That is right, yes.

Q Whom did you initially tell about this repair work, Mr. Miller?

A Well, on the 17th and 18th of February, I spoke to members of the State Police over there about it. Mr. Courtney was there, Mr. Bishop was there.

Q Would that be CAptain Bishop?

A Yes, Captain Bishop.

Q Of the State Police?

A Yes, and Mr. Jacobson was there.

Q What did you tell them with regard to the repair of

the set?

A Well, I told them I had repaired a Motorola color set for Mr. Moynahan, and it was approximately in the summer of 1967 when the repair was made, and that I made repairs on the sound coil, and it needed soldering on the winding on there. I had told them how I had soldered the coil and taped it.

Q I see. And this was in February of 1969; is that correct?

A Yes, it was.

Q Did you have occasion on February 21, 1969, to talk to Trooper Jacobson with regard to the repair of this set?

A Yes, I did.

Q What did you tell Trooper Jacobson about the repair?

A Well, I told him how essentially the same set had been repaired, the trouble was, again, on the sound coil, and I soldered it and taped the coil.

Q Did you indicate the make of this set to any of the troopers?

A I told them it was a Motorola 23-inch color television set, Early American cabinet, maple finish.

Q I see. And then you actually saw this set, I believe you testified on April 1, 1969?

A April 1st, I actually saw the set.

Q And that was in the town garage in Plymouth?

A The town garage in Plymouth.

Q On April 2, 1969, do you recall a Trooper Smith bringing this particular set to your shop?

A Yes, I do. Trooper Smith brought the set in the trunk of his car down to the shop for me to examine.

Q Did you examine the set?

A I examined the coil, the sound circuit coil there, and I told him it was the same set, that I fixed in Mr. Moynahan's house, and I told him if they opened the can on the coil they would find the black plastic tape that I had put on the coil inside, which wasn't visible from the outside. You have to remove the can to find that.

Q I see. And, subsequently, were you present in Hartford when the tape was removed from the coil that you have identified?

A Yes, I was.

Q That was in your presence by Trooper McDonald; is that correct?

A Trooper McDonald was there, Mr. Kramer from the State Board of Television Examiners, was also present. Mr. Jacobson was also there.

Q I show you a photograph, Mr. Miller; can you identify

this photograph, please?

A This is a photograph of the top view of the chassis of the coil.

Q Is the coil that you worked on depicted in that photograph, sir?

A The top side of it is. It is actually inside the can that is on here.

Q Would this be a photograph of the shield before it was removed?

A Of the shield before it was removed, that is right.

MR. GAFFNEY: I will offer it, your Honor.

THE COURT: Show it to Mr. Hennessey, please.

MR. HENNESSEY: I have no objection, your Honor.

THE COURT: It may be marked Exhibit GG.

(Photograph referred to received in evidence and marked State's Exhibit GG.)

BY MR. GAFFNEY:

Q Mr. Miller, would you step down here for a moment, sir, and point out to the ladies and gentlemen of the jury the shield containing the sound coil that you worked on?

A This shield here is the coil. It is right next to the 6T10 sound tube, the 6BL8 tube.

Q That is actually the shield that contains the coil that you worked on?

A That contains the coil which is between these two tubes.

Q Thank you, sir.

Showing you a second photograph, sir, could you identify that?

A Yes, it shows the underneath view of the chassis of the same coil.

Q Does that depict your work on this partiular chassis?

A Yes, it does, right here.

MR. GAFFNEY: I will offer it, your Honor.

MR. HANNESSEY: No objection.

THE COURT: It may be marked Exhibit HH.

(Photograph referred to received in evidence and marked as State's Exhibit HH.)

BY MR. GAFFNEY:

Q Mr. Miller, would you be kind enough to step down here, sir, and using this photograph, State's Exhibit HH, I will hold it, sir, and if you would perhaps point out just what you did.

A This is the underneath view of the coil here, and these are the two terminals here where the wires were removed from the top of the coil. These two wires were removed, the

tube socket, and this is the wire that was left on right here.

Q That is all your work?

THE COURT: I would like to have Mr. Miller point out to the Court, after he is through.

BY MR. GAFFNEY:

Q All right. And that depicts the work you did on the set?

A This is the work I did on this particular circuit of this particular set.

MR. GAFFNEY: Thank you very much. Now, would you be kind enough to explain it to the Judge?

THE WITNESS: Right here. These wires here were removed. This wire, and this one here were removed over here, and this is the long wire that was left on. The coil was removed out and repaired.

THE COURT: All right.

MR. GAFFNEY: No further questions.

THE COURT: All right, Mr. Hennessey.

CROSS-EXAMINATION BY MR. HENNESSEY:

Q During the course of your discussions with the State Police, Mr. Miller, did you give them any signed

statements?

A Any signed statements? No, I didn't, no.

Q Did you make any statements which were taken down?

A They have recorded statements which were taken over there, yes.

MR. GAFFNEY: I am sorry. If the Court pleases, I did not hear the response.

(The last answer was read by the reporter.)

MR. GAFFNEY: We have a statement from Mr. Miller that there may be some discrepancy about whether it was signed or unsigned, Mr. Hennessey.

MR. HENNESSEY: Yes, he just indicated that.

MR. GAFFNEY: All right.

BY MR. HENNESSEY:

Q On how many occasions did You make statements to the police that were taken down?

A It was on February, three days in February, the 17th, the 18th, and the 21st of 1969.

Q All right. Are these the only three days when you discussed this matter with the police?

A Outside of viewing the chassis and going up to Hartford, also to view the chassis, yes.

Q Did you testify in front of the Grand Jury?

A Yes, I also did.

MR. HENNESSEY: I would move at this time, your Honor, for copies of any statements in the State's possession with respect to previous statements of Mr. Miller, and also a copy of the transcript of the proceedings in front of the Grand Jury, in so far as it relates to Mr. Miller's testimony.

MR. GAFFNEY: If the Court pleases, I think the Court is aware of our interpretation of Public Act 680, your Honor.

THE COURT: Well, the jury may be excused.

(Jury leaves courtroom.)

(In the absence of the jury:)

THE COURT: Gentlemen, the Court is faced with the problem of either making an in camera inspection of these documents, the transcripts, or of ordering them turned over to the defense.

It seems to me that if there is nothing harmful to the State in the transcripts, that they should have no objection to turning them over because certainly if I find any substantial discrepancy in the testimony, I am going to turn it over to Mr. Hennessey, anyhow.

MR. GAFFNEY: Yes, sir.

* * * *

* * * *

until we try to resolve some of these legal problems.

In the meantime, you will, of course, heed my usual words of caution and I will admonish you that you must not discuss this case with anyone or permit anyone to discuss it with you; you are to report anything that anyone might say to you or approach you or attempt to talk to you about this case, and you will refrain from reading about this matter in the newspapers or looking at it on TV or reading it in the papers.

You may be excused at this time while the Court continues on, until tomorrow morning at ten o'clock.

(Jury excused and leave courtroom.)

THE COURT: All right. Now, gentlemen, with respect to the issue as to what length defendants may go in the cross-examination of Mr. Miller, I would like to hear Mr. Hennessey first.

MR. HENNESSEY: The basic claim which we would make, your Honor, is that we would seek to cross-examine.

THE COURT: Just one moment, please. All

right, you may proceed.

MR. HENNESSEY: We would seek to cross-examine Mr. Miller to establish a fixed motive in his mind which would be indicative of untruthfulness. The motive which we would seek to establish is that Mr. Miller, during the course of the one-man Grand Jury investigation that was conducted here in Waterbury with respect to one single claim which is of some form of a conspiracy to steal and sell stolen color television sets was in fact himself investigated by this Grand Jury with respect to his transactions with stolen color television sets. And that inquiry was made not merely of him as an independent witness to possibly testify as to some facts relevant to this case, but also that he was focused on as a potential accused, because of the fact that evidence was available to the police which would indicate that he was a seller of television sets himself, which sets were subsequently determined to be stolen.

We know from our own investigation of three instances where Mr. Miller sold stolen color television sets to individuals in the Waterbury area, Mr. Stevens, Mr. Gaspari, and Mr. Lanza. It is our

understanding as well that one of these gentlemen at least, was subsequently charged by the State's Attorney's office with the crime of receiving stolen goods, based upon the fact that he did receive a stolen color TV set from Mr. Miller.

However, to the best of our knowledge, Mr. Miller was not charged, although he, in fact, was the seller. And I believe that I can't state this for certain, but this is our investigation. I believe this is developed in the Grand Jury minutes before Judge O'Sullivan, that facts to this effect were brought out.

We place great emphasis in our own minds upon the testimony of Mr. Miller since standing at present un-cross-examined as he is, he would appear to a jury to be merely a man involved in the repair of television sets who did in fact at the behest of the individual, Mr. Moynahan, go to that home and repair this particular set, and so identifies it.

It therefore becomes crucial evidence as to the question of whether or not this set was ever in fact in Mr. Moynahan's home.

The other witness, Mr. Bishop, I believe your Honor was fair and gave us broad latitude in

examining him. I think we were able to elicit from Mr. Bishop those facts which we would feel would cause doubt on his credibility.

But the point that I tried to make is that where evidence exists which would establish a fixed motive in the mind of a person to lie or possibly to testify for the State, that such motive can be developed through proper evidence to establish that he would have a reason for testifying as he does. The reason we would submit here is that Mr. Miller is concerned over his own career and his own life, and that he does not want to be charged, even though there is evidence to establish that he was in fact a recipient and a subsequent seller for money of stolen sets.

We would claim that the Law in this area is set forth first in relying for basic text, Wigmore on Evidence, Section 967. This basic section deals with testimony of accomplices and co-indictees in a criminal case.

The basic doctrine applies to numerous cases involving such situations where a witness is put on the stand and then on cross-examination evidence is sought to be elicited to show that by

reason of some threat of criminal sanction or some pending criminal matter, he would have a motive to lie.

I will not necessarily go into detail on this unless your Honor chooses, because I would really then be reading from the book.

THE COURT: You may read it into the record.

MR. HENNESSEY: In the pocket supplement addenda to 967 was added, and the note is relevant here:

"Apart from accomplices and co-indictees, a witness in a criminal case, as well as in a civil case, may have a motive to testify falsely about a particular matter. No useful purpose would be served in undertaking to enumerate even some of the innumerable motives that may exist. Suffice it to say that evidence of such motive is to be distinguished from that which merely tends to discredit the witness generally."

They, therefore, cite United States vs. Lester in 248 Fed. 2d, 329.

THE COURT: What was that, again?

MR. HENNESSEY: These are cited in the note,

United States vs. Lester, 248 Federal 2d, 329; United States vs. Masino, 275 Fed. 2d, 129; also, a Second Circuit case, and in particular, People vs. Mason, which is a 1963 Illinois case, 281 Illinois 2d, 396, and a citation which is available in this library, 192 N.E. 2d, 835.

THE COURT: Those are pretty old cases.

MR. HENNESSEY: That is a 1963 case, your Honor.

THE COURT: 1963. Do any of those cases deal with the question as to whether or not you may cross-examine on the crimes committed by a witness?

MR. HENNESSEY: The question in People vs. Mason was whther or not certain witnesses might be cross-examined, State's witnesses, as to whether they had been arrested and indicted, and as to whether they had been suspended as narcotics investigators, in which capacity they arrested the defendant, to show bias.

The Court makes it clear here and I will read from page 837:

"The witness may be impeached by attacking his character by proof of conviction of an infamous crime. For this purpose only conviction may be

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proved, and proof of arrests, indictments, charges or actual commission of crime are not admissible. The rule prevailing in most jurisdictions and supported by the great weight of authority is that it is not permissible to show that a witness has been arrested, charged with a criminal offense, or confined in prison, or to inquire as to such fact upon cross-examination, where no conviction is shown, for the purpose of impairing his credibility."

That is a basic rule.

"However, showing interest or bias on the part of a witness is also an accepted method of impeachment, and even in jurisdictions where evidence of arrest or indictment is not ordinarily admissible to impeach credibility generally, the fact that a witness has been arrested or charged with a crime, may be shown or inquired into where it would reasonably tend to show that his testimony might be influenced by interest, bias, or a motive to testify falsely."

THE COURT: Well, I think I heard a statement here this morning to the effect that Mr. Miller had not been arrested nor had he been indicted.

Is that so, Mr. Secor?

MR. HENNESSEY: I don't know. I would have to defer to the State on that.

MR. SECOR: That is correct.

THE COURT: I thought I heard that statement made in open Court, or was it in chambers?

MR. HENNESSEY: As best I understand, he has not.

THE COURT: How far can You go to cross-examine him, say, where there is a potential arrest where his Constitutional rights may be infringed upon?

MR. HENNESSEY: Well, the issue is this, your Honor: I believe that the question of Mr. Miller's Constitutional rights are a matter of concern to him, not to me. If Mr. Miller is asked a relevant admissible question, the answer of which might infringe his constitutional rights, then the Constitution does not compel him to answer it. This is not the same thing as prohibiting an advocate from asking.

THE COURT: That is where the Court's concern is.

MR. HENNESSEY: And Mr. Miller's concern comes into play, not that I should be precluded from

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asking him, but rather, should he be protected from answering, if, in fact, he chooses to stand on his Fifth Amendment rights by reason of the fact that he feels such an answer would tend to incriminate him. That is his right, and he has a right to invoke it and I certainly would not gainsay but that is not the same thing as my right to cross-examine him.

Now, the issue as I see it, in the Mason case, reading on, in United States vs. Masino, which I have also brought down here:

"The Court held that it was improper to exclude evidence that the principal witness for the government in the prosecution for sale of narcotics had been arrested or indicted for previous narcotics offenses, where the disposition of the charge might show a motive for the witness to testify falsely. The distinction is quite clear in those cases which hold that the defendant has a right to examine the complaining witness with regard to the fact that the complainant had previously been arrested on a warrant issued on the complaint of the defendant. However, bias may be shown by circumstances other than a showing of ill will or bad feeling towards

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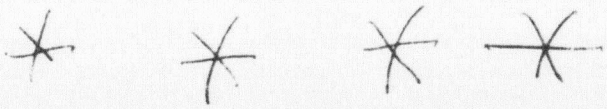

therefore be admissible. We are going even further, as your Honor noted, that we don't even have an arrest in this case. We have a suspicion, if that be the testimony before a Grand Jury, and clearly the State would argue that this matter also would be inadmissible in order to impeach the credibility of this witness, your Honor.

I think, if the Court please, and recalls the testimony of Mr. Miller presented this morning, it was of a very limited scope. He was confined solely, as counsel will relate, solely to the repair of a TV, and it is in the defendant's home, and it was confined to that, with that particular purpose in mind.

Granted the scope of the inquiry of the Grand Jury was much broader in respect to Mr. Miller, but this does not affect this particular defendant, and the State would object to it.

THE COURT: Do you agree, Mr. Gaffney, questions relating to motive, bias, prejudice, design, on the part of a witness would be properly admissible on cross-examination?

MR. GAFFNEY: No question, sir.

THE COURT: Even though they may be

unrelated to the direct testimony, they are still admissible to affect the credibility of his testimony?

MR. GAFFNEY: Yes. However, the State would argue that an arrest or mere suspicion does not mean interest or bias with regard to a witness on the stand.

THE COURT: All right. Anything else, gentlemen?

MR. HENNESSEY: No, your Honor. I know that 52, 145, and I know the Patterson case. 52-145 was a statute designed to take away the commonlaw disinfranchisement of a convicted felon as a witness which was one of the many early commonlaw rules carried over from England which would not permit anybody convicted of a crime from being a witness.

I do not necessarily believe that it constitutes the limits of the right of an attorney or the rules as expounded by our courts with respect to cross-examination.

THE COURT: Let me ask you this question, gentlemen, cross-examination of a witness:

"Did you steal two TV sets or did you receive two stolen TV sets, or three stolen TV sets?"

Do you feel that is an admissible question on cross-examination?

MR. HENNESSEY: I would try to develop it a little more subtlely, your Honor, I would hope.

THE COURT: Let's say that comes out.

MR. HENNESSEY: I would be glad to state I would like to know whether or not Mr. Miller was friendly with Mr. Vernale since when this case started Mr. Vernale's name was only incidental, but through Mr. Bishop I think His name has clearly been inserted into the case and is obvious.

There can be no doubt in the jury's mind, I don't think, that Mr. Vernale was running a place up in his garage where TV sets were going in and out.

If that part of Mr. Bishop's testimony is believed, it has been injected and it is in the minds of the jury.

I would like to inquire from Mr. Miller as to his business dealings with Mr. Vernale. I would like to determine, for example, whether or not some of the stolen television sets which were subsequently resold by him did not in fact come from Mr. Vernale. I have tried through two TV men, merely in anticipation of Mr. Miller's arrival, to show how a legitimate

dealer in television sets gets his television sets and how he gets documentation of it. And part of the reason I brought that out through Mr. DeMartin and Mr. DeCaprio was to show how reputable businessmen work, how they deal in sets, and to show that Mr. Miller's transactions were somewhat different, such that he was placed under suspicion, that he was questioned.

That, I think the man, frankly, whether or not the State has elected to take action against him as yet does not preclude the fact that they may.

I don't know what the State's attorney in this county does or does not do. I do know we have already seen, I think, some indication through Mr. Bishop that Mr. Bishop was here waiting seven months to be sentenced which I cannot honestly bElieve was the fault of his attorney or the Court or any intention to leave Mr. Bishop languishing in the Montville Jail.

I think that it was done by the State's Attorey because of their intention to use him in this case and determine, based upon his cooperation in this case, what punishment he is entitled to.

Now, I think also the case law as shown, and I think cases are cited in Wigmore to make it clear that evidence of that type is clearly admissible where you have a man such as Mr. Bishop on the stand.

We are only drawing a slight degree between Mr. Bishop and Mr. Miller. Mr.Bishop admits to a lot of things, but I think the point is that the cross-examination that I understood on him was intended partly to show that there were reasons.

I think if I have proper time to give your Honor cases which would show that a charge to the jury that a man has not been sentenced is a matter to be considered by the jury in weighing his testimony.

Now, I only point that out because, as I understand the way the State's Attorney's Office operates in this county, and it is not that more unusual than other counties such as New Haven. They decide who gets arrested, and I think that was so in this case. I think they made the decision as to who got arrested and who got charged, and who did not.

I think it is clear to me, and I think the

State would have to admit they knew Mr. Bishop had confessed to a lot of things that he was not charged with, and I think in candor that I can state that he is not going to be charged now, because I think he has paid his bill.

So, whether or not Mr. Miller has been charged here, I don't think is the sole criterion. The fact that he was under investigation, the fact that he was implicated, and the fact that he very well could be charged after this case is all over, I think is germane.

THE COURT: All right. Anything further?

MR. GAFFNEY: I don't think counsel answered the question your Honor put, but I will answer the question and say that I would think such a question would be clearly inadmissible. I don't think we are talking about Charlie Vernale in relation to Mr. Miller. We are talking about Mr. Miller and Mr. Moynahan. If we can talk about bias and interest on that basis, I would think it is clearly admissible to impeach his testimony. His testimony only concerns Mr. Moynahan and his transaction with Mr. Moynahan, and I think interest and bias, if there could be some showing of ill will or bad

blood between these two people is clearly admissible, but to say now we have got Charlie Wernale, isn't there some relationship there? I don't see where that relates to this defendant, your Honor, and that is the only matter being tried.

Mr. Miller is not on trial. Mr. Bishop is not on trial. Only Mr. Moynahan is on trial. If we can show interest or bias between any witness that testifies, and Mr. Moynahan, I claim that it is clearly admissible.

However, with regard to any other person, I would say it is clearly inadmissible and I think your Honor's question pertains to some other person or items which I would say is inadmissible.

THE COURT: Very well, gentlemen.

We will adjourn Court until ten o'clock tomorrow morning.

(Court was adjourned.)

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A That is correct.

Q All right. Then, do you remember whether or not Mr. Moynahan was present when you completed the work? Or did you have to call him in, or what?

A I believe I called him in and he came in and he looked at the set and I told him what work I had done to it and explained to him what originally was wrong, and he seemed satisfied with the repair, and he paid me, and I left.

Q Okay. Now, I believe, by the way, did you have occasion to bring your records of this transaction, your business records with you?

A There was no record of this transaction.

Q Well, did I understand you to say that you were in the same business back then as you are now?

A That is correct, yes.

Q And I believe you did identify, when asked by Mr. Caffney, he asked you what your business was, and you said you were a TV repairman?

A That is right, yes.

Q And that was the business you had been in. You know, when this happened, you were still in the same business; right?

A That is right.

Q Operating out of the same place?

A Well, at that time it was in a different location than it is right now.

Q Was that a corporation?

A There are three of us in the business. It is a corporation.

Q Now, how did you account for the money received?

MR. GAFFNEY: I object, your Honor. I don't see where this is relevant to the matter.

MR. HENNESSEY: I think it is, your Honor. I think it is relevant to recollection.

MR. GAFFNEY: If the Court please, I fail to see what relevance it has to recollection. We have gone far afield on recollection. I fail to see where accountability for money has anything to do with recollection. It is clear there is no business record of this. I think it is substantial at that point.

MR. HENNESSEY: I don't know if it is that clear. Do you mean clear to you?

MR. GAFFNEY: He has testified to that effect. There is no business record of that transaction.

THE COURT: Gentlemen, there will be no colloquy between counsel. If you have an objection, refer it to the Court.

A The money received was for labor. There were no parts involved in the transaction.

BY MR. MENNESSEY:

Q How did you account for it to your company?

A Pardon?

Q How did you account for it to your company?

A It wasn't done during business hours. It wasn't accounted to the company at all.

Q Oh. In other words, when you work on Sunday you are not in business?

A Normally, I don't work on Sunday. I was doing the man a favor by fixing his television set.

Q But you did work?

A On this particular occasion, I did, yes.

Q But when you do a favor on a Sunday, you are not any longer working for Miller & Fellman, Incorporated?

A It wasn't done during business hours. Occasionally, you might get somebody to, even during business hours, who would be satisfied with the set and would give you extra money for yourself, classified as a tip or bonus on the repair. I put that in this classification. It was strictly for my knowledge and labor that I was paid for in this particular case, to fix the set.

Q So it was a tip or a bonus to you as opposed --

A That is right.

Q -- as opposed to payment to Miller & Fellin?

A That is correct.

Q And I got the impression that Miller & Fellin was involved in the TV repair business.

MR. GAFFNEY: Well, I object, your Honor. I think again we are going far afield. We had not accounted for the money, we are now getting argumentative at this point, your Honor.

THE COURT: Well, I think the question is rather remote, Mr. Hennessey.

MR. HENNESSEY: Well, I would claim it, your Honor, as going to the overall question as to the scope of recollection of this man. I am trying to determine, without making any big arguments --

THE COURT: I believe that he has answered the question. The objection is sustained.

MR. HENNESSEY: Well, exception, your Honor.

THE COURT: Exception. He has already answered the question. He said the money wouldn't go to Miller & Fellin.

MR. HENNESSEY: I am sorry, I did not hear you, your Honor.

THE COURT: He has already answered the

question. On that ground it is also objectionable. It is repetitious.

MR. HENNESSEY: Well, I didn't understand that they were objecting to it On that ground, your Honor.

THE COURT: Proceed.

BY MR. HENNESSEY:

Q What I am trying to get at, Mr. Miller, merely, is: If there are any kind of written documents which you would have in your possession, or which Miller & Fellin, Incorporated, would have in its possession with respect to this particular business transaction?

MR. GAFFNEY: I object, your Honor. He has answered this question.

THE COURT: I will allow it.

You may answer it.

A There is no written document on this transaction.

BY MR. HENNESSEY:

Q Did you keep any kind of a notebook or anything like that personally with respect to calls that you received?

MR. GAFFNEY: I object, your Honor. He has answered this question. He has Indicated there is no record of this transaction.

THE COURT: He may answer tis question.

A There is no notebook of any transactions.

BY MR. HENNESSEY:

Q Is there any person, other than yourself, to whom you report this transaction so that that person might make a record of it?

A No. The only one that would know of it would be my wife, outside of myself.

Q Well, is your wife also your accountant?

A No, she is not my accountant.

Q That was my question to you: There was no accountant that you notified of this transaction?

A No.

Q Now, previous to your coming to the home of Mr. Moynahan, had you had occasion to repair other Motorola sets, 1967?

MR. GAFFNEY: I object, your Honor. I fail to see how that is relevant.

THE COURT: Read that question.

(The pending question was read back by the reporter.)

THE COURT: What is the purpose of this question, Mr. Hennessey?

MR. HENNESSEY: I think, if your Honor pleases, this witness has testified as to a repair

which he recalls because he recognized the chassis, and I think all this, on identification, is proper.

THE COURT: I will allow it.

MR. GAFFNEY: If the Court pleases, the direct examination was confined to repair work done on the defendant's TV alone, and I submit this is far outside the scope of the direct examination.

THE COURT: It is a question as to knowledge, of his ability. He has been offered here as an expert witness. I will allow it. Exception may be noted.

You may answer.

A I have repaired other MOtorola sets during 1967, yes.

BY MR. MENNESSEY:

Q And can you give me your best recollection as to how many occasions it was?

A As to how many occasions, oh, I couldn't tell you exactly. I Didn't keep track of how many occasions.

Q Well --

A We set them up originally. We also sell them, and we service sets sold by other stores, and I serviced quite a few.

Q Did you say you sold sets?

A Yes.

Q I thought you said you were also a TV repairman.

A We also sell sets, too. Not a great deal, but --

Q So you are a TV repairman at this time, and you are also a seller of television sets. In that way you had two businesses?

A It is the same business.

Q Well, just so I am not misleading, it is not just that you are a TV repairman; you are a TV repairman and a seller of TV sets?

MR. GAFFNEY: I object, your Honor. That is argumentative at this point. If the Court please, the direct examination was confined solely to the repair of the defendant's television in his home.

We are now far outside that scope of the direct examination.

THE COURT: The question has already been answered, Mr. Hennessey. Objection is sustained on this ground.

MR. HENNESSEY: Exception.

THE COURT: Exception may be noted.

BY MR. HENNESSEY:

Q You indicated to usthat Mr. Moynahan apparently called your house because his regular repairman was unavilable?

A That is what I understood, yes.

Q Prior to that time had You had occasion to do any repairs for Mr. Moynahan at his home?

A I had not, no.

Q On any type of a television set?

A No.

Q Now, subsequent to that period did you have occasion to do any repairs to any television set in his home?

A No. That was the only time I repaired any set in his home.

Q Did you determine at that time how it was that he happened to call you?

A Well, I didn't ask him at the time, no.

Q Up until that occasion, had you met him?

A I believe I met him at one other time prior to that.

Q All right. Where was It that you met him on that prior occasion?

A In Mr. Vernale's house on East Farm Street.

Q I take It you knew Mr. Vernalle?

A He was a customer of the store, yes.

Q Now, during the year 1967, was he a customer of your store?

MR. GAFFNEY: Well, I object, your Honor. We are not talking about Mr. Vernale. I fail to see

where this is relevant, and I also claim it is outside the scope of the examination. Mr. Vernale was mentioned only so far as this particular man, Mr. Miller, met the defendant, on that basis alone.

MR. HENNESSEY: I don't want to engage in arguments in front of the jury on this point, your Honor. If you wish me to state my reasons for this line, I will be glad to.

THE COURT: I am going to excuse the jury at this time.

(Jury left the courtroom.)

(In the absence of the jury:)

THE COURT: Is there anyone in the back of the room in any way connected with a newspaper or television or other media of news distribution?

All right.

MR. HENNESSEY: This is very basic, your Honor. I think it is completely permissible cross-examination since we have already had, through the State, testimony introduced to the effect that this was a set that was located for a long period of time in another location.

I am trying to redevelop this, that through this man that the gentleman did work at that same

location where that same set was located. This goes to the question of recollection and possibly mistake. I think this is certainly proper inquiry, your Honor.

MR. GAFFNEY: If the Court please, we are talking about cross-examination in this matter. I would direct the Court's attention to the direct examination in this matter, and he should be confined to the direct examination.

Now, if he has other reasons to call Mr. Miller as his own witness, there is no objection, but we are far afield of the scope of the direct examination at this point, and I fail to see where Mr. Vernale has anything to do with this particular witness at this point.

THE COURT: As I take it from Mr. Hennessey's question, the purpose of the question is to elicit whether or not this witness had perhaps repaired this particular set at a place other than the home of the defendant.

MR. GAFFNEY: Well, I don't think that is the question pending, your Honor.

THE COURT: Well, I think that is the general line he is seeking to develop.

MR. HENNESSEY: In other words, if he were having transactions with Mr. Vernale with respect to repair work or, frankly -- and I would claim this, your Honor -- acquisition of sets from him, this raises to my mind that we are placing the man in a position where the man has had business dealings with the man whom the State, through its witness, has identified as being a person who had possession of this set.

This is the evidence they have sought to introduce themselves. So that that evidence being in the record, inquiry along these lines is merely for the purpose of possible erroneous identification or exposure to the set at other places, and that would be germain.

MR. GAFFNEY: Now, Mr. Hennessey says this is the line of questioning that he wants to get here. Why doen't he get this right away? He can just ask the man: Did you ever repair this set at Mr. Vernale's house? It is that simple.

THE COURT: Mr. Gaffney, he has a right, as counsel, as you well know, to develop testimony in his own way. The Court has no right to restrict him unreasonably, so that I will allow these

questions.

MR. HENNESSEY: Secondly, might I say with respect to that, the State opened the door in this case to inquire about any other occupations by this man.

Since they put him on and their question on direct examination was: What is your occupation, Mr. Miller? and he answered: One occupation, TV repairman. They have opened the door now, I submit, to my showing that he is not just a TV repairman. It is their evidence.

MR. GAFFNEY: On what basis, your Honor? There is no basis for this whatsoever. It is far outside the scope of the direct examination.

THE COURT: Gentlemen, I would ask you this, to bear in mind the fact that we do have to discuss these matters in the absence of the jury. In the interest of saving time, and I believe both of you are experienced trial counsel and know the rules of evidence, and I ask you to adhere to the rules so that it will not be necessary to continuously excuse the jury.

However, I am not going to unduly restrict either one of you. I believe that these are questions

which are proper on cross-examination, and I will allow them.

MR. GAFFNEY: May I have an exception?

THE COURT: Exception may be noted.

THE COURT: We will take the morning recess at this time.

(Recess.)

(Court resumed.)

THE COURT: Call the jury, Sheriff.

(Jury enters courtroom.)

THE COURT: You may proceed, Mr. Hennessey.

MR. HENNESSEY: Thank you, your Honor.

Could I ask your Honor if I might have the last question read back?

THE COURT: Read the last question, please.

(The pending question was read back by the reporter.)

A Yes.

BY MR. HENNESSEY:

Q During the year, at any time during 1967, did you have occasion to go to his home?

MR. GAFFNEY: I object, your Honr.

THE COURT: The objection is overruled.

You may answer.

MR. GAFFNEY: May I have an exception?

THE COURT: Exception.

A Yes.

BY MR. HENNESSEY:

Q Did you have occasion to go there to make repairs on any television sets?

MR. GAFFNEY: Objection, your Honor.

THE COURT: The objection is overruled.

MR. GAFFNEY: Exception, please.

THE COURT: Exception noted.

A Yes.

BY MR. HENNESSEY:

Q How many occasions did you go to Mr. Vernale's home to make repairs on television sets during the year 1967?

MR. GAFFNEY: Objection, your Honor.

THE COURT: Objection is overruled.

Exception may be noted.

A About three times, I believe.

BY MR. HENNESSEY:

Q Was that always to the same set?

MR. GAFFNEY: Objection, your Honor.

THE COURT: The objection is overruled.

MR. GAFFNEY: Exception.

THE COURT: Exception noted.

A Well, I was there for several different reasons. One, his antenna. I checked that out. No. 2, I repaired a television set for him over there, and also a phonograph and a radio.

BY MR. HENNESSEY:

Q So, is it fair to say you only were at his house on one occasion, to make a television repair?

A On his television set he had there.

Q What kind of a set was that?

MR. GAFFNEY: I object, your Honor.

THE COURT: The objection is overruled.

MR. GAFFNEY: Exception, if your Honor pleases.

THE COURT: Exception Noted.

A What kind of a set was it?

BY MR. HENNESSEY:

Q Yes, sir.

A I believe it was a Zenith console.

Q Do you recall how big?

A How big?

Q Yes.

A At the time I looked at it, it was a 21-inch screen.

Q BLack and white?

A No, it was a color set.

Q In addition to going to Mr. Vernale's home to make repairs to that color television set, did you, at his request, make repairs to any other color television set?

MR. GAFFNEY: I object, your Honor. This is far afield. We are now in a collateral issue, far outside the scope of the direct examination, your Honor. It is irrelevant and immaterial.

THE COURT: The objection is overruled. Exception may be noted.

You may answer.

THE WITNESS: Could I have that question again?

THE COURT: Read the question.

(The pending question was read back by the reporter.)

A Well, he asked me to fix a set for two friends of his.

BY MR. MENNESSEY:

Q Well, what I am now limiting myself to is 1967, you understand, Mr. Miller. Was that during 1967?

A During 1967, yes.

Q Were the repairs done at the home of these particular

people?

A Yes, they were.

Q And these were repairs of color television sets?

A Yes, they were.

Q And do you recall what kind of color television sets they were?

MR. GAFFNEY: I object, your Honor. I would like a statement of the claim on this, if the Court pleases. I want the record crystal clear on this, because I feel we are far remote.

THE COURT: You may state your reason on the record for the objection, if you wish.

MR. GAFFNEY: Well, if the Court please, I would like first the claim why this is claimed as relevant and material in this matter.

THE COURT: Do you want to state the reason for your question, Mr. Hennessey?

MR. HENNESSEY: Yes, I am trying to develop Mr. Miller's connection, if your Honor pleases, with Mr. Vernale, and color television sets.

THE COURT: The objection is overruled, and an exceptionmay be noted.

BY MR. HENNESSEY:

Q What kind of color television sets were these,

Mr. Miller?

A What kind of television sets were they?

Q Yes, the color sets you Made reference to.

A Well, one set I repaired was a Magnovox table model.

Q One of them was a Magnovox table model, and what was the other one?

A The other one was an Admiral.

Q Now, during the year 1968, did you have any occasion to go to the home of Mr. Vernale to make any repairs on any color television sets?

MR.GAFFNEY: I object, your Honor.

MR. HENNESSEY: I would claim it, your Honor, on the ground that we have a gap from April, 1967, until March, 1969, during that period of time.

THE COURT: Yes. Very well, the objection is overruled, and an exception may be noted.

MR. GAFFNEY: If the Court pleases, as I understand counsel's claim on this matter, if we are talking about the particular TV set which is State's Exhibit 5, there is no objection to asking his man if He hadever before repaired this particular set.

But as far as repairing other sets at

Mr. Vernale's home, I don't see how that is relevant. It is far remote from the direct examination.

THE COURT: In the opinion of the Court, it is within the limits of proper cross-examination and I will allow it, Mr. Gaffney.

MR. GAFFNEY: May I have an exception?

THE COURT: An exception may be noted.

Read the question.

(The pending question was read back by the reporter.)

A After the period of 1967 I didn't see Mr. Vernale very much. I hadn't seen him at all after that period of time.

BY MR. HENNESSEY:

Q So the transactions involved with repairs were limited to 1967?

A That is correct, yes.

Q Would that be true as well with reference to any other persons to repair their sets?

A I believe it would be limited within that period of time.

Q It was limited to 1967?

A 1967.

Q All right. And during 1967 you indicated, also, that

you sold color television sets; is that not true?

A During 1967?

Q Yes.

A Well, all during the past ten years that has been true.

Q Now, during the period 1967, did you sell any color television sets which you obtained from Mr. Vernale?

MR. GAFFNEY: Objection, your Honor.

MR. HENNESSEY: I would claim it on the same grounds.

THE COURT: What is the purpose of this question, Mr. Hennessey?

MR. HENNESSEY: I am seeking to determine whether or not a mistake might not have occurred, that could it not have been possible for this gentleman to have obtained a set which he resold which might have been this set which the State has sought to place in Mr. Vernale's possession.

THE COURT: The objection is overruled An exception may be noted.

MR. HENNESSEY: Thank you, your Honor.

BY MR. HENNESSEY:

Q Did you --

MR. HENNESSEY: Excuse me, your Honor.

Might I again have the question read?

THE COURT: Read the question.

(The pending question was read back by the reporter.)

A Well, I told the State Police.

BY MR. HENNESSEY:

Q Well, excuse me.

THE COURT: No. Please listen to the question and answer the question put to you.

Read the question again.

(The pending question was read back by the reporter.)

THE WITNESS: Do you want a yes or no answer?

THE COURT: Answer it yes or no.

A The answer is yes.

BY MR. HENNESSEY:

Q Yes, you did?

A Yes.

Q The answer is yes. How many, sir?

MR. GAFFNEY: Objection.

THE COURT: The objection is overruled. An exception may be noted.

A There were two.

BY MR. HENNESSEY:

Q Two?

A Yes.

Q To whom did you sell them, and when?

MR. GAFFNEY: Objection.

THE COURT: Is this again on the question of possible identification, Mr. Hennessey?

MR. HENNESSEY: Yes, your Honor.

THE COURT: The objection is overruled.

MR. GAFFNEY: Is the representation that we are talking about this particular set or are we talking about any set?

THE COURT: This is cross-examination. Proper latitude is allowable. I will allow it.

MR. GAFFNEY: The date has no objection, if the Court please, just for the record, if it is in regard to this set in question.

THE COURT: You can clear that up on redirect examination.

MR. GAFFNEY: Objection.

THE COURT: Exception may be noted.

BY MR. HENNESSEY:

Q To whom did you sell such sets?

MR. GAFFNEY: I object. What type of sets

are we talking about? Perhaps we can clear it up right away.

MR. HENNESSEY: Excuse me. If I might, could I have the last question read back, which your Honor has already ruled on?

THE COURT: Read the question.

(The pending question was read back by the reporter.)

THE COURT: You may answer.

A Well, the two sets were sold, I believe I gave this information before, to Mr. Stevens and Mr. Gaspari. As to the time, I could not tell you.

BY MR. HENNESSEY:

Q In addition to those two, is it correct that subsequent to 1967, you did not sell any sets that you obtained from Mr. Vernale?

MR. GAFFNEY: I object, your Honor. Perhaps I just didn't follow the question.

THE COURT: I think the objection to this question is sustained.

MR. GAFFNEY: Thank you very much.

BY MR. HENNESSEY:

Q My question, then, would be: During 1968, did you sell any sets which you obtained from Mr. Vernale?

MR. GAFFNEY: Objection, your Honor.

THE COURT: The question has already been answered, Mr. Hennessey. The objection is sustained.

MR. HENNESSEY: I am sorry, your Honor, I may be misled, but I was aware that he said that he did not do any repairs after 1967. I asked those questions about, one, repairsat Mr. Vernale's home, and, two, about repairs at other people's homes.

THE COURT: I will allow the question.

MR. GAFFNEY: May I have an exception noted?

THE COURT: Exception may be noted.

BY MR. HENNESSEY:

Q The question was: During the year 1968, did you sell any color television sets that you obtained from Mr. Vernale?

A No.

Q By the way, do you have in your records any documents indicating, or any documents relating to the purchase of those two color television sets?

MR. GAFFNEY: I object, your Honor.

THE COURT: What is the purpose of this question, Mr. Hennessey?

MR. HENNESSEY: Well, I am seeking to

determine again, your Honor, whether or not this man may have other documents or information in his possession which would be of assistance to me with respect to the question of identification.

MR. GAFFNEY: Identification of what, this particular set? I don't follow his reasoning, your Honor. We have talked about all the other sets except this particular set.

MR. HENNESSEY: Could I be heard on that, if your Honor pleases?

On repeated occasions Mr. Gaffney has sought to limit me to this set. I think it is obvious, your Honor, what our defense is, and I don't think that our case rests solely on this set.

MR. GAFFNEY: If the Court please, the defendant's case is not before the Court. The State's case is before the Court, and the State's case is based on this set and this man has testified as a State's witness on direct examination. His examination was limited to this particular set, and I submit it should be limited to that scope.

THE COURT: I think the last question is remote, Mr. Hennessey. I will sustain the objection

to the last question.

MR. HENNESSEY: All right. I must apologize, I don't recall now what the last question was. I don't want to repeat it and open it up for another exception, so could I merely ask your Honor to permit me to hear what the question was that I asked?

THE COURT: Read the question.

(The pending question was read back by the reporter.)

MR. HENNESSEY: You don't have to answer it.

THE COURT: The objection is sustained to that question.

BY MR. HENNESSEY:

Q Now, you did indicate to us earlier, I believe, in answer to a question by Mr. Gaffney, I believe you were asked to come down here and do you recall when you were asked to come down here and look at this particular exhibit, Exhibit S; do you remember that?

A The chassis?

Q Yes.

A Yes, I came down and looked at it.

Q Right. And you were asked whether or not you could state

absolutely and positively under oath that this object here was the repair you made.

A That is right.

Q There was no doubt in your mind?

A That is right.

Q All right. But actually, this isn't, is it, this isn't the repair that you made?

MR. GAFFNEY: I object, your Honor. I think It is argumentative at this point.

MR. HENNESSEY: Oh, please.

THE COURT: Rephrase the question, Mr. Hennessey.

MR. GAFFNEY: Thank you.

MR. HENNESSEY: I claim the question.

THE COURT: It is argumentative.

MR. HENNESSEY: Well, it is cross-examination, your Honor.

THE COURT: It is cross-examination in argumentative form. Rephrase the question.

BY MR. HENNESSEY:

Q You did come down, did you not, and point to this and say, "This is the repair that I made"?

A I identified the chassis and the repair on it, yes.

Q And there was absolutely and positively no doubt in

* * * *

present when the tape was removed?

A That is correct, yes.

Q ANd do you recall Sgt. McDonald?

A Yes, I do.

Q And you remember him removing the tape and the wire?

A Thatis right.

Q And that, I imagine, is vivid in your recollection, is it?

A Yes.

Q Now, you did indicate to us that on prior occasions, I believe you said on three separate days, the State Police made inquiry of you with respect to this transaction?

A Yes.

Q On the first occasion do you recall that being February 17, 1969?

A That is correct, yes.

Q And I believe you were asked then: Did you ever repair a set for Mr. Moynahan?

MR. GAFFNEY: May I have the page?

MR. HENNESSEY: Page seven.

BY MR. HENNESSEY:

Q "Did you ever repair a set for Mr. Moynahan?"

And your answer was: "Moynahan? Sounds familiar."

Do you remember answering that way?

A Yes, that is exactly the way I said it.

Q And someone Said, "Yeah, he's the deputy superintendent of police."

And you said, "Paul?"

Do you remember that?

A Well, I had to know which Moynahan they were talking about.

Q In any event, when they said it was Paul, you then remembered?

A That is right.

Q That was on North Main Street. You said, "On North Main Street? Yeh, I think I did look at his set once for him. He called me on a Sunday morning, and he had to have it for the ballgame or something."

A That is correct.

Q Well, do you remember what the "something" was?

A The "something" as far as I know, it was the ballgame.

Q Well, it says, "The ballgame or something." Is it fair to say that as of February 17, 1969, you did not have a specific recollection that it was a ballgame?

A I had a recollection it was a ballgame.

Q So I guess that addition, when you said, "a ballgame or something," that was just the use of the phrase?

A It might be.

MR. GAFFNEY: I object. We are now getting argumentative.

THE COURT: The objection is sustained.

MR. GAFFNEY: Thank you, your Honor.

BY MR. HENNESSEY:

Q And then they asked you, "Do you remember when that was?"

And you said, "Maybe a year ago."

Do you recall that?

A I said approximately a year, a year and a half, yes.

Q Well, if the answer that is given in the statement says that your answer was, "Maybe a year ago," would that be right, that that is what you told the police then?

A What I told the police was, about a year, a year and a half. And that would be in the summer of 1967.

Q Well, do you recall that when you were spoken to on February 17, 1969, that a tape recorder was being used?

A Yes, I knew they had a tape recorder there.

Q And as each question was propounded, and each answer given, it was tape recorded, in so far as you know?

A The recording was used for the transcript, yes.

Q Were you subsequently given an opportunity to read the transcript that was typed out on February 17th?

A I have seen the transcipt at one time.

Q Well, were you given an opportunity, then, to make corrections in it?

A There were no corrections made of the transcript.

Q Do you recall, then, being asked this: "Do you remember the set?"

And do you recall answering, "Oh, boy, it is a 23-inch color set, but I couldn't tell you the model of it, or anything like that"?

Do you recall giving that answer?

A Well, the model was referring to the exact model number of the set designated by number. I could identify the set by picture, but not by number at that particular time.

Q Well, model in the TV trade means console?

A I believe I told them it was early American maple finish model, 23-inch screen.

Q On February 17, 1969, you did tell them that?

A I told them that over the period of the time I was interviewed.

Q Well, I am more concerned about the first interview, now. I am only asking you about the first, if you can recall.

A The first interview, I believe I told them it was just a 23-inch Motorola, screen.

Q Do you remember, then, someone said, "Yeh. Was it

a -- oh, you couldn't tell the model; you don't know whether it was a floor model or -- or -- "

And you answered, "Well, it is a console model. I couldn't tell you the name or the serial number or the model myself, because I didn't look at it."

Do you renember giving that answer?

A I didn't look at the model or serial number on the set, but I was able to describe the type of cabinet and the make of the set.

Q Well, you don't recall saying that. Then you don't renember whether or not the answer I just read to you was the answer you gave at that time?

A I said I couldn't recall the model or the serial number.

Q You merely recall it to be a 23-inch floor model console; that was all you could recall as of February 17th?

A I told them it was a Motorola because they were about the only one with a 23-inch tube at that time, I believe.

Q You told them on February 17th it was a Motorola, Mr. Miller?

A I told them the only one with a 23-inch screen was a Motorola.

Q Did they ask you on February 17th the retail value of that set?

X X X X

And you said, "About a year and a half, now."

A About a year and a half would be right, yes.

Q Then they said, "Year and a half. And it was also in the summer??"

And your answer was, "It was around the summertime, yeh."

And they said, "Football was on, though?"

Do you remember that question being asked you?

A Yes, I do.

Q Do you know why any reference was made to football?

MR. GAFFNEY: I object, your Honor. This is a question asked him. It is not his answer, your Honor.

THE COURT : The objection is sustained.

MR. HENNESSEY: All right. I will certainly buy that.

Excuse me, your Honor.

THE COURT: Certainly.

BY MR. HENNESSEY:

Q All right. Let me get back to this part, Mr. Miller. In any event, a question was asked you, "Football was on, though?"

And your answer, "It was some -- I can't remember exactly what date it was, but I know about a year and a quarter

to a year and a half ago, approximately."

Do you recall giving that answer?

A Yes, I did.

Q Then it was asked, "And it could have been then in the fall of '67?"

And your answer, "Possibly, yeh."

Do you recall that?

A Yes, I do recall that.

Q Do you recall also, on that first occasion, being asked, on page ten -- and I believe the question leading in was, "He hasn't been in touch with you in the last few months?"

And I believe this was referring to Mr. Moynahan.

And your answer was, "No, I haven't seen him at all. In fact, that was the first and only time I repaired his television set."

And then the question, "What -- how much was the cost of that, do you remember?"

And your answer was, "Well, as the console set, generally it's in the $500 bracket, maybe -- anyway, $450 to $550."

Do you recall giving that answer?

A Yes, I did give that answer.

Q All right. Now, on subsequent occasions you were again questioned by the State Police, particularly on February

18th you were again, and at that time you were again asked, "Well, Eddie, let me ask you: Have you -- you've had a chance to think about all this stuff. Do you now know what kind of a set Moynahan had, the make?"

And your answer then was, "Well, it was a color console. It could have been a MOtorola, but I don't know exactly."

Do you remember giving that answer?

A Yes, I did give that answer.

Q "You don't remember?"

And your answer was, "It's hard to recall. This goes back almost two years."

Do you remember saying that?

A That is right.

Q That was the statement you gave the day after the statement I was just reading to you before?

And then the question was, "Yeh. But you had to do considerable work on that; right, Eddie? You had to take -- "

And you said, "Well, it wasn't considerable work. It was one service call, and that was all that was required there. There was some soldering of the chassis."

A That is correct.

Q Then on page thirteen, someone asked you again, "But in the course of doing whatever work you had to do on it,

you didn't recognize this set as a -- "

And you said, "I did not recognize it."

Is that correct?

A Well, would you repeat that part again?

Q Well, I take it there were some policemen, One or more policemen, who were asking you the questions on February 18th?

A February 18th, that is right.

Q How many policemen, by the way, were asking you questions?

A How many Policemen were there present, you mean? There were three present at that time.

Q All right. And, by the way, how long did this interview take?

A How long? Well, I only -- I don't have a recollection of the exact time. Perhaps an hour or an hour and a quarter.

Q And the day before, how long was the interview?

A About the same length of time.

Q And apart from the statements that were transcribed, did you also have conversations with the officers when the tape recorder was off?

A No, the whole interview was on tape.

Q Now, you were called to go back. Well, you were called back, apparently, on February 18th, from some -- for some

more questions -- Well, on February 17th, the first time you were interviewed, did you indicate to the police that you were indirectly advised about Mr. Moynahan and his need for repairs by Mr. Vernale?

MR. GAFFNEY: May I have the page?

MR. HENNESSEY: I don't have the page. I was not given that page.

MR. GAFFNEY: I don't know where we are going, then. I will object to this line of questioning.

MR. HENNESSEY: I will withdraw the question and ask from what I did get.

On February 13th, the question, "But Charlie did tell You to take care of Moynahan's set?"

And your answer was, "Well, Mr. Moynahan called me directly. He never said anything about taking care of Mr. Moynahan at all."

And the question was, "Is that what he told you?"

And then Sgt. Courtney -- is that a State Trooper?

THE WITNESS: Sgt. Courtney, yes.

BY MR. HENNESSEY:

Q He said, "Yesterday I asked you, I said-- 'Now,' I

said, 'Come clean with me on Moynahan.'"

And you said, "Well, he called me Sunday morning -- "

And then the question was, "Wait a minute. Let me just mention the way you did. I asked you about Moynahan, and then you gave me the name of Zollo, too, on repairing. Now, I said, 'Did Vernale give the recommendation or give the recommendation for you?'"

And you said, "Indirectly. That's the word you used."

Do you recall being asked that?

A Yes, he asked me that question.

Q And you said, "Well, I have no way of knowing if he gave a recommendation at all."

And the question was: "Well, you said, 'Indirectly.' This is the word you used."

That is the trooper talking; right?

A Yes.

Q And you said, "A lot of times they don't tell you -- "

And then he said again, "That's the word you used yesterday."

And then you said, "I mean, a lot of times somebody will call you and they don't tell you who recommends you."

And then the sergeant said, "Why did you say, 'Indirectly'? Why didn't you just tell me, 'No,' or, 'I don't know'?"

And you said, "Well, I don't know."

And then the sergeant said to you, "Why did you say, 'Indirectly'?"

And then, do you recall answering, "It would have been better if I did not know if anybody recommended me to any people. I mean, during the course of business, you are recommended to a lot of people."

And that is as much as I have of that.

So my question to you now is: Did you tell the State Police on February 17th that your reference was, that the reason you went to Mr. Moynahan's house was that you were indirectly referred to him by Mr. Vernale?

A I told him?

MR. GAFFNEY: I object to this line of questioning, your Honor. I think it is clear, in fact, the transcript indicates there was no recommendation at all. I claim the question is improper.

[illegible] cross-examination.

THE COURT: It is improper.

MR. MENNESSEY: I also move for such copies of the February 17th statement as we were not given so that I could clarify this point.

MR.GAFFNEY: Well, if the Court please, as

long as we are making speeches in front of the jury, I think it should be clear in the record for the jUry that the Court decided this matter as to just what matters would be handed to defense counsel.

MR. HENNESSEY: I would nonetheless make the motion, your Honor. I believe there is a problem of inconsistencies here in the statement.

THE COURT: There is a proper time to Make such a motion, Mr. Hennessey, and this is not it.

I will entertain your motion in the absence of the jury at a later time.

MR. HENNESSEY: All right.

THE COURT: You may proceed.

MR. HENNESSEY: Well, excuse me, your Honor. Would you note an exception to that?

THE COURT: Exception noted.

MR. HENNESSEY: And then I will discuss it with you later.

BY MR. HENNESSEY:

Q Now, I believe you were asked on February 17th -- I beg your pardon. That was not on February 17th. No. Excuse me. You were asked on February 17th, "Could you tell, looking at the set"-- the question was, "Could you tell, looking at

the set," and that is page sixteen -- "Could you tell, looking at the set, whether anyone else had ever repaired it?"

And do you recall saying, "Well, it's pretty rough to tell, actually, unless there's parts cut out of it or a lot of tubes in there look like they're all the original tubes."

A THat is right, the tubes were the original tubes in there.

Q Well, when you say, "Well, it's pretty rough to tell, actually, unless there's parts cut out of it," what do you mean by that?

A Well, you asked if anyone else had worked on the set. If just a plain tube is replaced, a lot of times it is hard to tell, but if any other work is done on the set, you can see it there, and you will know that someone else has worked on it.

Q Then you said, "Or a lot of tubes in there look like they're all the original tubes"?

A That is right.

Q Was that the tubes in the chassis that was found in [illegible]?

A Were the tubes found in the chassis at Plymouth, did you say?

Q No. Were you making reference to the tubes that were found in the chassis when you made this examination of it?

A Well, the time I was asked this question, the set hadn't been found yet.

Q So, when you say a lot of tubes in there looked like they were all the original tubes, it sounds to me like You are talking in the present tense. Were you not talking in the present tense?

A That is right, at time the set, they didn't have the television set at the time I was interviewed.

Q Were you looking at any set as you were testifying?

A No, I was not looking at any set. I was sitting in a chair.

Q So you were then recalling at this time what your recollection was of the condition of the tubes at the time, at that time?

A At that time, yes.

Q And you had no real recollection of every tube and every item in the set?

A Not every item in the set, no.

Q And, as you indicated to them, you were not able to tell when you made this repair, whether or not anyone else had made the repairs?

A I was not able to tell whether or not anyone else had or not.

Q You were not. Do you recall on February 18th being

asked -- and I have reference to page thirteen -- you were asked first, "Are they all the same? The coils that you worked on, are they all the same in all the sets?"

And you said, "Well, this particular trouble I believe was on the sound section."

Do you recall that?

A That is right.

Q Somebody asked a question, "Right?"

And then you said, "Each particular type of set is a little bit different system, different coil. They all don't use a universal part. They all have their own parts."

Do you remember saying that?

A That is correct.

Q Then the question was, "But you don't recognize, from memory, at least, what this set was, the make of it?"

And your answer was, "No. When we go in a house we try to get to the trouble on there. We don't look at the make of the television all the time, or -- "

Was that your answer?

A I gave that answer, yes.

Q And then someone said, "Well, when you look at the make, doesn't that tell you, as a repairman, something about that set?"

And you said, "Well, not -- not always, no. We

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generally turn the set on to determine what the trouble is in there."

And then someone said, "I realize that, but, I mean, once you've established what the trouble is, doesn't the make of the set help you in determining what kind of a coil they have, for instance?"

And you said, "Well, if you have to order a part, it does. Then you have to call up the company and order the part for the set."

Then the question was -- someone had some trouble here -- "But you don't -- none of this -- "

Then you said, "But, anything I can repair, I will repair, other than ordering a part, especially if -- the customer is always in a hurry for their set. They always would like to get it fixed right away, which I believe you understand."

Then someone said, "Yeh, sure."

And you said, "So we try to fix it, if at all possible."

Then someone said, "Well, I'm just trying to refresh your own memory."

Your answer, "Yeh, I know it."

Then the question continues on, "On this set. You seem to have a pretty good memory on the others. This is one -- of course, you did only see this man once."

And you said, you started saying, and you were cut off, "I saw him -- "

Then the question was, "In the meantime, -- "

And you said, "That's the only time I did any work for that man, that's right. A lot of people call you once and they won't ever call you again."

So I take it, then, that inquiry was made of you about other repairs on this particular day, February 18th?

A Inquiry was made principally of this particular set here.

Q Well, this statement on February 18th says, "Q. On this set, you seem to have a pretty good memory on the others."

And I take it, then, you were asked about others.

A Well, there was one in there you mentioned the name before, the same date.

Q Was that all or were you asked about several sets, repair work on several sets?

MR. GAFFNEY: I object, if the Court pleases. I think if we have relevant testimony it would certainly be given to counsel under our broad discovery rule, as the Court has ruled. If it is not given under discovery, clearly it would be inadmissible in evidence. I would submit that our rules for admissibility would be more stringent

than the broad discovery rule. He attempts to get through evidence what he did not get through discovery, your Honor.

THE COURT: I will allow the question. The objection is overruled.

You may answer.

A The others they are referring to right there, I don't particularly know.

BY MR. HENNESSEY:

Q THey weren't repairs, the others that were talked about; they weren't repairs?

A Well, I explained to him how I repaired another set at one other time, also.

Q Now, you testified previously that on only two occasions did you sell sets that you received from Mr. Vernale?

A That is correct, yes.

Q Did you, however, tell the State Police of the State of Connecticut, that you sold a set to a Mrs. MacIntosh in Wolcott?

MR. GAFFNEY: Page, please?

MR. HENNESSEY: Page eighteen, of February 2nd.

A There was a statement there but it was incorrect, that I had sold. I repaired a set for a party at that address.

BY MR. HENNESSEY:

Q Well, this was asked of you on February 21st, "Well, let me ask you -- you know, you've been rather cooperative with us -- "

MR. GAFFNEY: May I have the page, please?

MR. HENNESSEY: Page eighteen.

BY MR. HENNESSEY:

Q (Continuing) And then you said, "If I would have sold any sets, I would have told you, because the first day I come in here, you asked me if I bought any sets from Charlie Vernale, and I told you. If I was trying to hold something back, I wouldn't have said anything. I try to be cooperative, if I can."

Do you remember that?

A THat is true.

Q And then the question was, "Now, you did tell us about one set you claimed you sold yourself to a Mrs. MacIntosh?"

MR. GAFFNEY: I object to this line of questioning. I think the transcript handed to defense counsel, your Honor, is explanatory, as to this natter, and I would claim it is imProper use of the testimony.

THE COURT: Yes. I cannot see the relevancy, Mr. Hennessey, at this point, as to whether a set was

sold to Mrs. MacIntosh, unless you have some specific reason.

MR. HENNESSEY: It relates to the question I asked him about the sale of sets. He said he sold two sets which he obtained from Mr. Vernale, one to Mr. Stevens and one to Mr. Gaspari.

THE COURT: It seems to me it is quite remote from the inquiry under consideration.

MR. HENNESSEY: Well, might I ask your Honor, then, if you would examine pages --

THE COURT: Is it your claim that this testimony, or the testimony you are seeking to elicit, has any bearing on the issues in question?

MR. HENNESSEY: Yes.

THE COURT: In what way?

MR. HENNESSEY: I would still say the same point being the business dealings with Mr. Vernale and the question of identification of this particular set in light of the facts of business dealings with Mr. Vernale involving color television sets, which is what I originally claimed, and the point I am trying to bring out is apparently on one prior occasion an indication was made of a set which was sold which turns out also to be a set from Mr.

Vernale.

THE COURT: I am not going to tell you how to conduct your cross-examination.

Read the last question.

(The pending question was read back by the reporter.)

THE COURT: You may answer that yes or no.

MR. HENNESSEY: If your Honor pleases, that was making reference to the transcript. That was the question in the transcript of the police. That is not my question, your Honor.

MR. GAFFNEY: And, if the Court please, I think the testimony now being, or trying to be elicited is to show that Mr. Miller was inconsistent. The transcript clearly shows on these two pages he is consistent right along the line, and I think it is improper use of the transcript at this point.

THE COURT: I will allow the question.

MR. GAFFNEY: Exception, if the Court pleases.

THE COURT: Exception noted.

MR. HENNESSEY: Well, I think probably to avoid objection I will in fact withdraw the question, your Honor, despite the fact that I have prevailed.

BY MR. HENNESSEY:

Q I will ask you this Instead, Mr. Miller: Did You at any time tell any member of the Connecticut State Police that you sold a television set to Mrs. MacIntosh in Wolcott?

MR. GAFFNEY: Objection, your Honor.

BY MR. HENNESSEY:

Q (Continuing) Which was a set received from Mr. Vernale?

MR. GAFFNEY: I object, your Honor. How does this have anything to do with State's Exhibit S, which is the only TV set claimed by the State?

THE COURT: It is remote, Mr. Hennessey, unless you ask him a specific question which is in any way connected with the inquiry in question. If not, I will sustain the objection to this particular question.

MR. HENNESSEY: Might I state my ground for claiming it, then, your Honor?

THE COURT: Yes.

MR. HENNESSEY: I claim It because I am seeking at this time to show prior inconsistent statements with respect to conversations which this man had, and that he has testified here under oath that he only received two sets from Mr. Vernale which he resold,

and I am asking him whether or not he previously told someone whether he sold a third set.

THE COURT: I will allow the question for what it is worth.

MR. GAFFNEY: May the entire transcript be read in this matter? I think it is self-explanatory. To take it piecemeal out is not a fair recitation of the transcript. It is an improper question.

MR. HENNESSEY: I have a right to do this, Mr. Gaffney, on redirect.

If he wants to read --

MR. GAFFNEY: Exception.

MR. HENNESSEY: If Mr.Gaffney desires to read the entire transcript, yourHonor, and by that I mean the entire transcript, I will not object.

MR. GAFFNEY: I am not reading the entire transcript, your Honor. However, I don't think it is proper questioning and use of a prior transcript to take bits and pieces here and there, where it benefits your position, and that is basically what Mr. Hennessey is doing in this case.

THE COURT: Well, Mr. Gaffney, you have a right to clear it up on redirect.

MR. GAFFNEY: Exception, if the Court

pleases.

THE COURT: Exception may be noted.

BY MR. HENNESSEY:

Q The question was: Did you at any time tell a member of the State Police that you sold a television set to a Mrs. MacIntosh in WOlcott, which was a set received from Mr. Vernale?

A That is the first part of this transcript You have there before you referring to that set -- in the first part it does show that I did sell the lady a set, but it was proven false.

Q So, you subsequently, on further questioning by the police, stated that you did not sell Mrs. MacIntosh that set?

A That is right.

Q But did you in fact tell them before that you did?

MR. GAFFNEY: May I have the transcript read on that matter, your Honor?

THE COURT: You may, on redirect. You may, Mr. Gaffney, but I think Mr. Hennessey has a right to proceed his way.

MR. GAFFNEY: Exception, if the Court pleases.

THE COURT: Exception may be noted.

BY MR. HENNESSEY:

Q Now, finally, On February 21st, the third interview with the State Police, you were asked again on page 28, "Have

you had any second thoughts on the Moynahan set?"

And you said, "Well, the only thing I know about his set is -- what I told you before."

Do you remember answering that?

A Yes, I said that.

Q So, as of February 21, 1969, having been questioned on three separate days by the Connecticut State Police with respect to this particular repair on this particular set, is it fair for me to say, Mr. Miller, at that time you told the police you didn't know what the make was?

MR. GAFFNEY: Objection, your Honor. Now, that is not His testimony. That is an unfair characterization of his testimony.

MR. HENNESSEY: It is a question, your Honor.

MR. GAFFNEY: It is argumentative and stating his testimony in an improper fashion. He did not state that.

THE COURT: Well, I cannot tell, gentlemen, whether it is or is not, because I don't have the transcript in front of me. So I can't.

Read the question.

(The pending question was read back by the reporter.)

THE COURT: You may answer that yes or no.

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A I knew what the make was, yes.

BY MR. HENNESSEY:

Q So you did in fact tell the State Police either on February 17th, 18th, or 21st, that you knew in fact the make was Motorola?

MR. GAFFNEY: Objection, your Honor. He has answered the question.

THE COURT: You may answer.

MR. GAFFNEY: Exception.

A I told them it was a Motorola set.

THE COURT: Keep your voice up, Mr. Miller.

BY MR. HENNESSEY:

Q But on February 18th you were asked, the second time, "Do you now know what kind of a set Moynahan had, the make?"

MR. GAFFNEY: Page, please. I am sorry, Mr. Hennessey, if You give it to me at the outset, I could check my notes.

THE COURT: What page, Mr. Hennessey?

MR. HENNESSEY: It is page twelve, your Honor.

BY MR. HENNESSEY:

Q "Do you know what kind of a set Moynahan had?"

MR. GAFFNEY: Objection, your Honor. We

have been over this very same question. This transcript contains these very same words and I object to it, your Honor, as repetition at this point.

THE COURT: This is repetitious.

MR. HENNESSEY: Your Honor, I claim it. I have just asked this man whether or not he told the State Police between february 17th and February 21st that this was a Motorola set, and his answer is yes, and I believe I have a right to show the answer to that is other than yes.

MR. GAFFNEY: He has already been through the transcript every place where the Motorola is mentioned. I submit the question is now for the jury.

THE COURT: Of course, you see, Mr. Gaffney, this is cross-examination and more latitude is allowed on cross-examination than on direct examination. It is a question of whether or not the cross-examination is within reasonable limits. I am going to allow the question.

MR. GAFFNEY: We have been over the very page, your Honor. Exception, if the Court pleases.

THE COURT: Exception may be noted.

BY MR. HENNESSEY:

Q My question was, on February 18, 1969, you were asked by the Connecticut State Police, "Do you now know what kind of a set Moynahan had, the make?"

And you said, "Well, it was a color console. It could have been a Motorola, but I don't know exactly."

A And I told them it was a 23-inch screen, and Motorola was the only company that made the 23-inch screen.

Q We will get to that, too, Mr. Miller.

And the question was, "You don't remember?"

And your answer, "It's hard to recall."

Do you remember that?

A That was the first time they asked me.

Q You said, "This goes back almost two years."

A That was the first time they asked me about his set.

Q The question was, "Was it a MOtorola?"

And you said, "It could have been a Motorola, but I don't know exactly."

Well, what does that mean, "I don't know exactly"?

MR. GAFFNEY: Objection, your Honor. Again, he is taking this out of context.

MR. HENNESSEY: Please, I only have a part of the context of this.

MR. GAFFNEY: Read the entire part. You have it.

If the court please, he has made it crystal clear in the course of these two interviews. I will object to it. It is improper to take it piecemeal out of the transcript.

THE COURT: Of course, Mr. Hennessey, we have been over this.

MR. HENNESSEY: I may be repetitious, but I also have a concern for my client to make sure that I have thoroughly exhausted cross-examination on any witness.

THE COURT: I understand that, but within reasonable limits. You have gone over this and I am going to sustain the objection. It is repetitious.

MR. HENNESSEY: I haven't got to the Grand Jury, yet. It is going to take some time.

MR. GAFFNEY: May that be stricken?

THE COURT: The comment may be stricken from the record.

BY MR. HENNESSEY:

Q When was the first time that You told anyone that the set was a Motorola?

A The interview on the second date. I believe it is February 18th.

Q And on this occasion you did make a statement to the police somewhere that it was a Motorola?

A In the context of that transcript that is in there, yes.

MR. HENNESSEY: I am going to offer this transcript, your Honor, as an exhibit.

THE COURT: Is there objection, Mr. Gaffney?

MR. GAFFNEY: I do, your Honor, now that we have been over it a dozen times. I don't see why the transcript is necessary at this point. If he wants to offer the isolated areas where Mr. Miller talks about the Motorola, I will have no objection, your Honor.

THE COURT: The objection is overruled. It may be marked Defendant's Exhibit 3.

What is it that you are offering, Mr. Hennessey?

MR. HENNESSEY: I am offering the portion of Mr. Miller's statement that was furnished to me.

THE COURT: A statement to whom?

MR. HENNESSEY: It is a statement to the Connecticut State Police. It has a pencil notation

identifying it as being made on February 18, 1969.

THE COURT: Very well. Defendant's Exhibit 3 and it consists of seven pages.

(Seven pages of transcript received in evidence and marked Defendant's Exhibit 3.)

MR. GAFFNEY: If the Court please, may I have the ground for the admissibility of this document?

THE COURT: Do you want to state your ground for the record, Mr. Hennessey?

MR. HENNESSEY: Yes, your Honor. I claim it as a prior inconsistent statement. I claim it as being represented to be a verbatim transcript of those portions of Mr. Miller's testimony that we were entitled to see that were indicated as being relevant to this particular question, and that Iclaim them also because the statement will show that Mr. Miller nowhere in these documents says that this was in fact a Motorola, no doubt in his mind, as I asked him.

MR. GAFFNEY: THIs was not the question, your Honor, and I submit, your Honor, there is not a prior inconsistent statement in that document, and I think the Court should examine it before we admit it into evidence in this matter.

If that is the offer, I claim It is improper

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because Mr. Miller's recollection of this particular interview is quite vivid, and he is giving us his recall. He has not been inconsistent, I would submit, and I ask the Court to examine the document.

THE COURT: All right, we will take the usual noonday recess at this point and I will undertake the task during the noonday recess.

Now, my usual words of caution, members of the jury: You must not discuss this case with anyone. You must not read about it in the newspapers. You must not listen to it on the radio, or look at it or listen to it on television. Is that understood?

Recess until two o'clock.

(Court recessed.)

Wednesday, January 21, 1970
Afternoon Session

(In the absence of the jury:)

THE COURT: Let me see, Mr. Hennessey. You had asked the Court to examine the transcript of February 17, 1969, and February 18, 1969?

MR. HENNESSEY: Yes, your Honor.

THE COURT: And you wish to offer this at this time?

MR. HENNESSEY: Yes. Well, let me see. I wish to offer the one of February 18, 1969, your Honor, in its entirety, and then other pages.

THE COURT: February 18, 1969, wasn't that already an exhibit? I have it marked Defendant's Exhibit 3. February 18, 1969, is already in evidence.

MR. GAFFNEY: Is that the entire document, sir?

THE COURT: Isn't that the one, the transcript?

MR. HENNESSEY: That is right, February 18th, I have it marked on my record. It is defendant's Exhibit 3.

MR. GAFFNEY: As I understand it, you offered it for a prior inconsistent statement.

THE COURT: Inconsistent statement.

MR. GAFFNEY: And that was the entire document, all seven pages.

THE COURT: Yes.

MR. GAFFNEY: Would all be inconsistent?

THE COURT: Not every page, but I am not going to cull it out.

MR. HENNESSEY: The reason, I might state, is that I asked the gentleman when did he tell them in fact without any reservation, I understood the question to be, that it was a Motorola, and he said February 18th, and so the transcript is offered to show what he did say and to show what he did not say. At no place in this transcript did he ever state categorically that it was.

MR. GAFFNEY: Well, if the Court pleases, I think there is mention of a Motorola TV in this particular transcript. I would claim that the other pages that do not pertain to Motorola would be inadmissible. There is certainly nothing inconsistent about the other pages. He claims only a Motorda set, your Honor, and there ismentinn of a Motorola set In this particular transcript, the 18th.

MR. HENNESSEY: No. My point is, also, to show that this is not the entire transcript with respect to his inquiry about this set. And the point is that contrary to what he has said, which was that he did in fact tell the police on February 18th that it was a Motorola, and I asked him when did he tell them that it was, as opposed to when he thought it was.

THE COURT: If I understand Mr. Gaffney, Mr. Gaffney's Claim is that there are certain pages of that transcript which have no bearing upon this issue.

MR. GAFFNEY: That is correct, your Honor.

MR. HENNESSEY: Excuse me, your Honor. My position would be, you see, that the whole statement would have a bearing on that claim because this does represent the entire statement he made, and there is no mention at any point in this statement that he told them it was a Motorola.

The only thing he said is that he thought or he guessed at that time, or it probably was, but he wasn't sure. And then when he was asked he said it was in fact.

THE COURT: I am going to let the entire

exhibit in, February 18, 1969, may go in.

MR. GAFFNEY: The entire document?

THE COURT: The entire document.

MR. GAFFNEY: May I have an exception, your Honor?

THE COURT: Exception may be noted.

MR. HENNESSEY: With respect to that, I was seeking only to offer merely as inconsistent statements the portion of page seven starting, "Do you remember the set?" running through to the very top of page eight when he says, "Look at it."

THE COURT: The rest of page eight you are not claiming?

MR. HENNESSEY: No. Or any part of seven, other than from the question, "Do you remember the set?" which is below the answer, "Maybe a year ago."

THE COURT: All right.

MR. HENNESSEY: The questions on page ten, the only ones would be, "What -- how much was the cost of that, do you remember?"

The answer, "Well, as the console set, generally it's in the $500 bracket, maybe -- anyway, $450 to $550."

show inconsistencies on the part of the witness.

MR. GAFFNEY: I appreciate that.

THE COURT: I will allow it.

MR. GAFFNEY: My claim is, it is imProper to disect it from the remainder of the exhibit.

THE COURT: In any event, I will allow the whole exhibit in.

MR. HENNESSEY: I don't claim the whole transcript, only those parts of it that represent prior inconsistent statements.

If that argument is going to maintain, I will claim you have to offer the whole thing. There, again, this is not the total transcript. This -- only a partial picture.

THE COURT: Well, are you claiming that these questions take the testimony out of context, Mr. Gaffney?

MR. GAFFNEY: That is correct, your Honor.

THE COURT: All right. Then the whole exhibit goes in. The statement to the police of February 17, 1969, will go in, in whole. That is my ruling, gentlemen, and we will have no further discussion on this question.

MR. GAFFNEY: Objection, if the Court please.

* * * *

E D W A R D M I L L E R , having been previously duly sworn, resumed the stand, and testified further as follows:

(In the absence of the jury:)

THE COURT: You may be seated, Mr. Miller. You may proceed, Mr. Hennessey.

BY MR. HENNESSEY:

Q Mr. Miller, with respect to the two sets you testified to that you sold to Mr. Stevens and Mr. Gaspari, you said you obtained those from Mr. Vernale; is that not so?

A That is true.

Q Yes, and could you tell me what the price was that you paid Mr. Vernale for those two sets?

MR. GAFFNEY: I object, your Honor.

THE COURT: What is the purpose of this question, Mr. Hennessey?

MR. HENNESSEY: I am trying to develop -- well, let me withdraw the question.

Well, I suppose we have to do it this way. I thought when the jury was absent --

THE COURT: If you are going to do it, do it question by question.

MR. HENNESSEY: Okay, I will withdraw that

question.

THE COURT: Very well.

BY MR. HENNESSEY:

Q When you received these sets from Mr. Vernale, did you know that they were stolen?

A No, I did not.

MR. GAFFNEY: Objection, your Honor.

THE COURT: The objection is overruled.

MR. GAFFNEY: Exception.

THE COURT: Exception.

MR. GAFFNEY: If the Court pleases, for the record, I think we can state that we have done some research on this matter. If the claim is made that --

THE COURT: The answer is, "No, I did not." It certainly Is not a harmful question and answer to the State, so I am going to let it stand.

MR. GAFFNEY: All right. Exception, if the Court pleases.

THE COURT: Exception. Proceed.

BY MR. HENNESSEY:

Q At the time you were first questioned by the police, Mr. Miller, were you told by any police that you were under investigation for anything?

MR. GAFFNEY: I object, your Honor.

THE COURT: Just a moment, please.

MR. GAFFNEY: All right, sir.

THE COURT: Read the question.

(The pending question was read back by the reporter.)

THE COURT: I will allow that question.

MR. GAFFNEY: Objection, if the Court pleases, and an exception.

THE COURT: There may be an exception noted.

A No.

BY MR. HENNESSEY:

Q And at any subsequent time after that first inquiry, were you told by any member of the police, or any member of the State's Attorney's office that you were under investigation?

MR. GAFFNEY: Objection.

THE COURT: Objection overruled.

You may answer.

MR. GAFFNEY: Exception.

A No.

MR. GAFFNEY: Objection.

THE COURT: The objection is sustained and the answer may go out. The question is excluded.

MR. HENNESSEY: I am trying to catalogue it so I won't ask it at any time.

BY MR. HENNESSEY:

Q Was any threat made to you that you would be arrested?

A No.

MR. GAFFNEY: Objection.

THE COURT: Objection overruled.

BY MR. HENNESSEY:

Q The answer is no?

A No.

Q At any time did anyone make any promise to you as to what might occur if you did testify?

A No, there was no promise.

Q Well, was there any conversation about it with anyone?

MR. GAFFNEY: I object, your Honor.

THE COURT: The objection is overruled.

A No, there was no conversation about that.

BY MR. HENNESSEY:

Q Did you have any conversation with any member of the State Police or any member of the State's Attorney's office about your testimony?

MR. GAFFNEY: Objection.

THE COURT: That is a pretty broad question, Mr. Hennessey. I will sustain the objection.

BY MR. HENNESSEY:

Q You did state on previous occasions in the statement to the police that you were cooperating with the police?

A Yes, that is true. It is in the statement.

Q Did you come to them with an indication you wanted to cooperate with them?

A Well, the State police first came to me at the store.

Q All right. And at that time, what was the reason that they told you they were there?

MR. GAFFNEY: Objection; we are now in the realm of hearsay, your Honor.

THE COURT: Yes, I think we are getting pretty far afield now.

MR. HENNESSEY: I am not claiming it for the truth of the statement. I am claiming it for his state of mind, You understand.

In other words, obviously, what the State Police said would be hearsay unless it was circumstantial evidence.

THE COURT: Why don't you ask him what his state of mind was?

MR. HENNESSEY: Well, all right.

BY MR. HENNESSEY:

Q Tell me what was your state of mind after you talked to the police.

MR. GAFFNEY: Objection.

THE COURT: Overruled.

MR. GAFFNEY: Exception, if the Court please.

THE COURT: Exception may be noted.

A What do you mean by that, by "state of mind"?

BY MR. HENNESSEY:

Q Well, did you at any time become apprehensive about this questioning?

A No, I wasn't that apprehensive about it.

Q What would you say your attitude was or your state of mind? Do you understand now what I mean?

A My state of mind?

Q Yes.

A Well, I told the police I would be willing to cooperate with them in any way I could.

Q Now, you were then questioned about this transaction and several others, were you not?

A That is true.

Q And at no time during the course of any of that questioning was there any suggestion that you yourself were

under investigation?

MR. GAFFNEY: I object.

THE COURT: Objection overruled.

MR. GAFFNEY: Exception, if the Court please.

THE COURT: Exception.

A No.

BY MR. KENNESSEY:

Q Did you, yourself, in your own mind, at the time, think you were under investigation?

MR. GAFFNEY: I object, your Honor.

THE COURT: Objection is overruled.

MR. GAFFNEY: Exception, if the Court pleases.

THE COURT: Exception.

A No.

BY MR. KENNESSEY:

Q No. And no one ever said anything to you; no one ever suggested to you that if you cooperated or if you didn't cooperate, something would happen to you; nothing like that?

A That was never said, whatsoever.

MR. KENNESSEY: All right.

THE COURT: Is there anything further?

MR. KENNESSEY: Let me check with Mr. Wade, your Honor.

BY MR. HENNESSEY:

Q When you were answering these questions, were you limiting your answers to the Moynahan situation?

MR. GAFFNEY: Object, your Honor. That is not clear to me.

THE COURT: I will sustain the objection.

BY MR. HENNESSEY:

Q All right. The point I am trying to make is, as I was asking these questions to you about testifying about the Moynahan transaction in the case, if any promise or threats were made.

A Well, it was over the entire questioning that was on this incident, and there were no threats or promises or anything of that sort.

Q Excuse me. When you say "incident," what are you referring to?

A The days in question that I was questioned about these matters.

Q Are you limiting yourself to the Moynahan transaction or are you taking into account other transactions that I asked about?

A I was talking about the three days I was questioned by the police last February.

Q About the Moynahan transaction or about all the

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transactions which they questioned you about?

A About the transactions which they asked me about on those days, which are in the transcribed report.

Q Well, the thing was, apart from the Moynahan matter, you understand, for example, was any promise or threats or remarks made to you about the Lanza matter?

A No.

Q Or the Griffin matter?

A No.

Q Or the Stevens matter?

A No.

Q Or the Gaspari matter?

A No.

Q Or the MacIntosh matter?

A No.

Q I take it you never at any time felt you were under investigation for any of those?

THE COURT: You asked that question before.

MR. HENNESSEY: I am sorry. I am not sure if he is limiting himself to the Moynahan matter or not.

THE COURT: It is repetitious, but I will allow you to answer it.

A No.

BY MR. HENNESSEY:

Q Well, I asked the question, did I not, about the price, and if I am correct, your Honor sustained the objection to my question as to how much He paid Mr. Vernale for those two sets?

THE COURT: Yes, I think I sustained the objection to that question.

MR. HENNESSEY: And the next question I would ask, your Honor -- You don't have to answer this -- I asked him whether or not he kept any books or records with respect to those two transactions, and I would propose to have him answer that if there is no objection.

THE COURT: I will allow it.

BY MR. HENNESSEY:

Q All right. Did you keep any books and records of those transactions?

MR. GAFFNEY: I will object.

THE COURT: Objection overruled.

MR. GAFFNEY: Exception.

THE COURT: Exception noted.

A No, I did not.

BY MR. HENNESSEY:

Q Well, you have no receipts?

MR. GAFFNEY: I object, your Honor. He has answered the question.

THE COURT: Yes, the objection is sustained.

BY MR. HENNESSEY:

Q All right. When you obtained the sets from Mr. Vernale did you receive any invoices?

MR. GAFFNEY: I object, your Honor.

THE COURT: Yes, we are going far afield now. I will sustain the objection.

MR. HENNESSEY: Well, the only reason I would claim that, your Honor, is that I am inquiring as to the regular course of this business.

THE COURT: You are going into collateral matters now which could go far afield. The objection is sustained.

MR. HENNESSEY: May this line of inquiry, your Honor, be considered as an offer of proof in the absence of the jury?

THE COURT: Yes, and I would suggest that the best way of handling this would be in the presence of the jury, to have the reporter read the questions and the answers to the jury, and have the questions and answers appear before them rather than have you repeat them again.

MR. HENNESSEY: Well, I didn't want to ask the questions in their presence.

THE COURT: I think those questions to which there has been objection, and which have been sustained should be omitted from the hearing of the jury.

MR. GAFFNEY: You know, I would just quarrel with this procedure, your Honor, because I think this is the reason we did it in the absence of the jury.

THE COURT: That is correct, for counsel's guideline. Unless he wishes to withdaw these questions, I have no way.

MR. GAFFNEY: I would object to the procedure recommended by the Court.

MR. HENNESSEY: I will suggest this.

THE COURT: Your objection is well taken. I merely suggested it as a precaution so that the jury would not have before it anything which is improper, but if you object and your objection is sustained.

MR. GAFFNEY: Thank you.

MR. HENNESSEY: I won't go into this line of inquiry at all.

THE COURT: Then that solves the whole problem.

MR. HENNESSEY: But I would only ask that you permit me to have those portions, those questions which we have asked here be presented to the Court as an offer of proof.

THE COURT: Any objection to that?

MR. GAFFNEY: No objection.

THE COURT: Very well. It is so ordered.

MR. GAFFNEY: And so that the record would also be clear, I then take exception to your denial of permitting me to introduce those few questions.

THE COURT: Exception may be noted.

THE COURT: Anything else?

MR. GAFFNEY: No, your Honor. We can resume.

THE COURT: Summon the jury.

(Jury returns to the courtroom.)

THE COURT: All right, Mr. Hennessey, you may proceed.

MR. HENNESSEY: Thank you, your Honor.

BY MR. HENNESSEY:

Q Mr. Miller, you were called to testify in front of the Grand Jury, were you not?

A Yes, I was.

Q That was subsequent to the time that you examined

* * * *

A I know I said I saw him there at one time during that statement, yes.

Q Yes. And the question, "Well, is this -- when you say you stopped by there, you mean he summoned you there, or you stopped by yourself?"

And your answer was, "No. This was about a 45 spindle I got him for one of his machines. HE had a record player and he was trying to get the 45 spindle for it. It's a Webcor."

And the question, "When was it do you think you saw Mr. Moynahan and Mr. Griffin there, roughly?"

And your answer was, "Well, this goes back over a year now. About a year and a half ago, I'd say."

Do you recall giving those answers to the State Police on February 17th?

A Yes, I did.

MR. HENNESSEY: One moment, your Honor.

I apologize, your Honor. Just one minute to check something.

That is all I have, your Honor.

THE COURT: All right. Mr. Gaffney.

REDIRECT EXAMINATION BY MR. GAFFNEY:

Q Mr. Miller, you have testified you recognize State's Exhibit 8 because of the work that you performed on it?

A 228

A That is correct.

Q Can you tell me, sir, are there other ways to make the same repair that you made on State's Exhibit 8?

A Other ways? Well, yes, more commonly, the whole coil would be replaced rather than try to repair it.

Q The entire coil would be replaced?

A Normally, that would be the correct procedure, yes.

Q I see. So when a sound coil malfunctions on a TV set, normally you replace the entire coil; is that correct?

A That's right.

Q What would such a replacement cost?

A The coil itself, the value of the coil?

Q The replacement, if you had to replace it.

A I am thinking the coil is worth about two dollars on the set.

Q No. Normally, if you had such an item in your possession, it would be a two dollar repair?

A Whatever it was, yes.

Q And with regards to the actual repair itself, are there other ways to repair such an item as this other than the way in which you have testified that you repaired it?

A Well, it could be repaired in different ways, also, yes.

Q What are some of those ways, Mr. Miller?

A Well, number one, the winding inside did not have to be taped after it was soldered. The wire could be just bent out of the way.

Q You didn't have to put the black tape on it?

A You didn't have to put it on. I put it on for a safeguard for the splice pulling away, and also preventing shorting out against the other winding of the coil.

Q Are there other manners in which this repair might have been done?

A Well, I could think of several different ways, yes, that it could be done.

Q Would you tell us about those different ways?

A Well, on the coil, you could cut all the wires off at the coil itself, and lift it out.

Q How many did you cut, sir?

A Well, I just cut the two on the coil and the two on the tube socket.

Q But it would have been possible that you could make the very same repair by cutting all of the wires?

A Right at the coil form.

Q You only cut two; is that correct?

A I only cut two because it is more difficult soldering it back at the coil because it melts when you put heat on it.

Q Are there other ways you might have made this repair?

A 230

A Well, there could have been different things wrong with the coil. The condensers could have been wrong inside.

Q But the actual malfunction was the breaking of the wire?

A Yes, but in this case it wasn't true. It was just the wire that was broke inside.

Q I see. Can you think of any other variations In which this particular repair might have been made?

A That is all I can think of right now.

Q All right. You testified that there was one wire left attached that you personally left attached to the coil.

A There was more of a slack in that wire, so it wasn't necessary to take it off. The others were direct connections to the circuits.

Q Would there be another way?

A The other wire could have been removed, also, to take the wire out.

Q In any case, is there any doubt in your mind that the work that you have testified to is in fact your work?

A No, there is no doubt that I repaired that set.

Q Would you tell the ladies and gentlemen of the jury why you have specific reason to recall the repair at Mr. Moynahan's house?

A First of all, it was on a Sunday morning that he

called me. Secondly, it was a fairly new set. It wasn't a year old yet, and that particular chassis was very reliable as to breakdowns, especially the coils or anything like that.

Q How about the actual work that you performed on this chassis, Mr. Miller?

A Pardon? The actual work?

Q Yes. Is this a common, ordinary thing that you do every day?

A No, it is a very uncommon thing, actually, to do.

Q I see. And it has been your testimony, I think, Mr. Miller, that you told various members of the Connecticut State Police Department, I believe you have indicated Captain Bishop, Trooper Jacobson, as well as Trooper Smith, with regard to the repair that you made to this sound coil; is that correct, sir?

A That is right. That is correct.

Q That is before the set was found: is that correct?

A That was before the set was found, yes.

Q And you had told them in detail what repairs you made on this set?

A Yes, I did.

Q And you told them --

MR. HENNESSEY: Objection. Leading.

A 232

THE COURT: The objection is sustained.

BY MR. GAFFNEY:

Q With regard to the statements that have been produced, Mr. Miller, I refer to Defendant's Exhibits 3 and 4, referring first to State's Exhibit No. 4, the statement which you gave to the police department after, on February 17th. This is the first interview that you had with the Connecticut State Police; is that correct, sir?

A Yes, it is.

Q And that was on the 17th of February?

A February 17th, that is right.

Q You had not seen this set since you repaired it in the defendant's home; is that correct?

A No, I hadn't; that is correct.

Q At that time did you tell them you don't remember the make?

MR. GAFFNEY: I am referring to page 17, Mr. Hennessey.

Q (Continuing) "No. It probably was a Motorola, because at that time -- yeh, they were the ones that had the 23-inch rectangular screen."

And the question, "And this is again about a year ago?"

Your answer, "About a year and a half now."

Do you remember that testimony, sir?

A Yes, that is correct.

Q That was the first time you were interviewed by the Connecticut State Police; is that correct?

A Yes, it is.

Q Also, in Defendant's No. 3, and that is your interview with the Connecticut State Police Department, February 18th, I refer you to page twelve, "Do you know what kind of set Moynahan had, the make?"

Your answer, "Well, it was a color console. It could have been a Motorola, but I don't know exactly."

And the question, "You don't remember?"

Your answer, "It's hard to recall. This goes back almost two years (inaudible)."

Also, on page 58 of that same interview, February 18th, "In other words, it's near Moynahan's house?"

Your answer, "Well, Moynahan lives up on North Main Street, I believe."

The question, "Right. All right. Now, when you repaired Moynahan's television set, -- correct?"

The answer, "Yes. He called me up on Sunday because he wanted to watch the ballgame."

The question, "Right?"

Your answer, "So I repaired it for him."

A 234

The question, "Now, what type of set did he have?

Your answer, "I think it was a Motorola."

The question, "Motorola. What kind?"

Your answer, "It was a console."

The question, "Console. Where was it located in the room, when you went up there?"

"A. (No response.)"

The question, "How did You get to the set?

Answer, "Well, I stopped in front of his home, he opened the door, and I went in."

The question, "And where was the set when you went in?"

The answer, "It was in the front room, and there's a small alcove, I believe, off the front room, where he had his television set."

The question, "In other words, it was right off the door as you went in?"

Your answer, "When you walk in, from the back of his house, the television would be on the right-hand side."

The question, "Right-hand side. All right."

And that is on February 18, 1969; is that right, sir?

A Yes, it is.

Q And that is prior to you seeing this set at the town

garage?

MR. HENNESSEY: Objection. Leading.

MR. GAFFNEY: I won't claim it, your Honor. I will withdraw it.

BY MR. GAFFNEY:

Q Had you seen the set at the Plymouth town garage at that time?

A No, I had not. Q. /When, in fact, did you see the set at the Plymouth town garage?

A That was on April 1st.

THE COURT: What year?

THE WITNESSS: Pardon?

THE COURT: What year?

THE WITNESS: That would be 1969.

THE COURT: All right.

MR. GAFFNEY: I have nothing further, your Honor.

RE-CROSS-EXAMINATION BY MR. HENNESSEY:

Q The statements, Exhibits 3 and 4, the statement of February 17th and February 18th, two of the three written statements you gave to the police?

A That is correct.

Q And the statement of the 21st, as I recall the

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CHARLES VERNALE'S STATEMENT OF FEBRUARY 4, 1969
(PORTIONS DISCLOSED)

CAPT. BISHOP: Now, this is an interview at State's Prison in Somers. I am Capt. Wayne Bishop, Connecticut State Police Department. It is now 8:45 p.m. Present in the room are Mr. David Gerson, a Superior Court Reporter from Waterbury, Connecticut, Corporal James Smith, Connecticut State Police Department, Sergeant Orlando Raggazzi, Connecticut State Police Department, and Detective William Sullivan of the Connecticut State Police Department, and Mr. Charles Vernale - V-e-r-n-a-l-e.

This is February 4, 1969, and at this time I would open the interview with Mr. Vernale.

Mr. Vernale, I want to advise you of your rights. I want to advise you that you do not have to say anything; that if you say anything it may be used against you in court; that you are entitled to have a lawyer present, and if you can't afford a lawyer the State will furnish you one.

Having been warned, Mr. Vernale, will you indicate - do you wish to talk to us at this time?

MR. VERNALE: Well, yes.

CAPT. BISHOP Are you talking to us of your own free will?

MR. VERNALE: I am.

CAPT. BISHOP: Mr. Vernale, I just want to give you one further warning. You can stop answering questions any time you indicate you wish to. Is

that clear?

MR. VERNALE: Yes.

CAPT. BISHOP: Okay. I think basically you know why we are here, but I want to spell it out the record. We are investigating a series of cases involving the theft of, the receipt of and the possession of stolen property. I want to ask you about certain relationships with other individuals and I think we will start with John Bishop.

CAPT. BISHOP EXAMINED MR. VERNALE AS FOLLOWS:

Q Do you know John Bishop?

A Yes, I do.

Q Will you tell us what you know of John?

A Well, it goes back about a year and a half ago.

Q You have known John Bishop about a year and a half?

A Since he got married, yes, after he got married, I have knew him.

Q All right. What is your relationship with John Bishop?

A Well, his wife, you know -- I know his wife. When she came to Waterbury I helped her out a lot with regards to financial aid. At that time she didn't know Bishop herself. Then she moved out to Lake Witchcock in Waterbury. She moved and after she moved I bought some used furniture for her up in Hadley's Furniture Store in Waterbury, and I paid for it

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CHARLES VERNALE'S STATEMENT OF MARCH 5, 1969,
(PORTIONS DISCLOSED)

Examination by Lieutenant Ragazzi:

Q [illegible], now, you know that you don't have to answer any [illegible] questions that we ask you?

A Yes, that's right.

Q You know that you can have an attorney present if you want to. You know that any time during the course of the interview that you can terminate this interview.

A Well, you say an attorney. I could have an attorney.

Q You can have --

A What chance have I got to have an attorney?

Q You can have an attorney --

A I'm in prison here. My rights are all --

Q You have a right -- you have a perfect right, and you can terminate this interview right at this time if you want, Charlie, and if you want an attorney --

A Yo, I'm willing to cooperate with you.

Q You are willing to cooperate?

A Oh, yes, I'm willing to cooperate.

Q Then you waive the right to have an attorney here present at this time?

A Certainly.

Q O.K. Then you are aware of your rights?

A That's right.

Q O.K. All right, Charlie.

You know that any statement that you make can be used against you in court, Charlie?

A That's right.

Q You are aware of this also?

A Yes, I am.

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MR. VERNALE: I wasn't told that before.

MR. SECOR: I didn't ask you that.

MR. VERNALE: I see.

MR. SECOR: Do you understand it now?

MR. VERNALE: Yes, I do.

MR. SECOR: Now, you also have a right to consult with an attorney and to be excused from this hearing room to talk with your attorney about any answers to any questions which we may ask you before Judge O'Sullivan, and you have the right to have your lawyer right outside the door there where you can get to him if you want to. Do you understand that?

MR. VERNALE: Yes.

MR. SECOR: If you can't afford an attorney, one will be appointed for you.

MR. VERNALE: Yes.

MR. SECOR: Do you have an attorney?

MR. VERNALE: Yes, I have.

MR. SECOR: Is he going to be here today?

MR. VERNALE: Well, he was here a little while ago. He left.

MR. SECOR: Do you expect him back?

MR. VERNALE: I don't think so, because he

* * * *

Q How did you know this woman? How did you get to know her and to know that she wanted a set? How did she know about that set?

A I don't remember.

How did you know that she wanted to buy a set?

A I don't recall.

Q Was it through Nick D'Agostino?

A No, I don't think so. I think it was Mr. Miller, but I am not sure.

Q Mr. Miller?

A I am not sure.

Q Did you have Miller repair other sets that you sold?

A I don't recall.

Q Think it over now.

A Mr. Bishop said that Miller claims he serviced seven or eight sets.

Q Is that true or isn't it?

A I don't recall. I don't think so. No, it is not true.

Q It is not true?

A No.

Q How many sets did he service?

A I don't recall, to tell you the truth. I never

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Q I didn't ask you that.

A That is as far as I will answer the question. My son doesn't know my business.

Q I am asking you —

A I will not answer no other questions. That is as far as I will answer it. My son does not know my business.

Q I will ask you again, Charlie.

A I am not going to answer it.

Q Just wait a minute. I will ask you again —

A You are doing the same goddamn thing Mr. Bishop was doing up at the prison.

Q And I am going to continue to do it.

A You are not going to use Gestapo tactics on me.

Q I am going to ask you any questions I want to.

A And I will answer them. I will answer them to the best of my ability.

Q When your son says that the Waterbury police kept you in business, is that a true statement?

A I told you. I answered that question. I answered it. My son does not know my business, and neither does my daughter or my ex-wife or anybody. I was always by myself on my property.

Q You refuse to answer the question?

A I answered the question just now.

* * * *

Q You didn't say that Griffin got a set, did you?

A I don't recall. I told you, Griffin and I are not friends.

Q You could have said that he got a set from you. Why did you pick on Paul Moynahan?

A He mentioned the gentleman's name; not me. He mentioned them, and he claims my son mentioned them, but he never mentioned Griffin's name.

Q He didn't mention Griffin's name?

A No, he never mentioned Griffin's name.

BY MR. SECOR:

Q In the whole transaction here?

A Well, he mentioned the accident, yes. Griffin's name was mentioned in the accident.

Q He never asked whether Griffin got anything from you?

A I never gave him the information on the accident. Somebody else did.

Q Charlie, didn't Captain Bishop ask you whether Griffin got anything from you, any merchandise?

A I don't know. I don't think so. I am not sure.

Q Do you have a bad memory?

A I don t recall that. I know he mentioned the accident, "We know all about the accident in Florida," and he

I lived my life. What have I got to be afraid of? I am only afraid of my son. That is all I am afraid of, that this kid is involved innocently in this thing. That is all I am afraid of, and my family is involved in it. That is al I have in this world, is my boy and my daughter, and nobody else. My father is dead, my mother is dead. Everybody is dead. That is all I have got left.

Q In what year did your father die?

A I don't recall.

Q Where was he when he died?

A He was in Italy when he died.

Q He was in Italy?

A Yes, sir.

Q He served a long term in State's Prison?

A You don't have to bring that up. Yes, yes, and it is probably why I am ashamed to say today where my career started. I think that I explained that at one time. He is dead. God rest his soul.

THE COURT: Good morning, gentlemen. Are you ready to proceed?

MR. GAFFNEY: We are. We will withdraw our prior offer.

THE COURT: All right. Summon the jury.

(Jury enters courtroom.)

THE COURT: Good morning members of the jury.

Gentlemen, do you waive the reading of the roll call?

MR. HENNESSEY: I do.

MR. GAFFNEY: Yes, your Honor.

THE COURT: You may proceed.

MR. GAFFNEY: The next witness to be called is Mr. Vernale. His name has been mentioned. However, the State does not feel it could vouch for the veracity of this gentleman, and would ask the Court to call him as the Court's witness.

There is some authority for it, your Honor, and I would ask that this take place.

MR. HENNESSEY: I think, your Honor, maybe we are going to have to ask that the jury be excused again.

THE COURT: I am afraid so.

(Jury excused.)

(In the absence of the jury;)

THE COURT: Is there anyone in the spectator

has been beat up. I know, I have been told that once when he saw it, you know, he turned on Mr. Moynahan and threatened him. I know this is going to have to come out now that the door has been opened, and I don't know what we are going to do about it.

THE COURT: I don't see how we are going to avoid it in a trial of this type, especially since the evidence discloses that Mr. Vernale was being used as an informant. The State elected to disclose it, and I cannot criticize the State for doing so. I don't see how you could avoid it.

The question before the Court now is whether or not the Court should call Mr. Vernale. I don't believe that that should be done at this time.

It seems to me that you have a right to put Mr. Vernale on the stand and call him as a State's witness, and if he proves to be hostile, then, of course, you have your rights, as you well know.

MR. GAFFNEY: Excuse me, your Honor. I am not claiming him as a hostile witness. He had made contradictory statements under oath on various occasions, so, frankly, we cannot vouch for his veracity.

As I understand the Connecticut law, a side calling a particular party must vouch for his

veracity. It is the common practice in the Federal Court to call the witness as a Court's witness since he is a necessary witness to the case.

THE COURT: Is there objection on your part, Mr. Hennessey, to having Mr. Vernale called as a Court's witness?

MR. HENNESSEY: Well, I would like to say this, your Honor: Before he is brought in front of this jury, I would like it clear in the record that I did not want this man brought in in front of this jury until it has been clearly ascertained in the absence of that jury whether or not he should be permitted to testify, one; two, whether or not he intends to invoke the Fifth Amendment.

I think it would be grossly prejudicial to permit a witness to take the stand and now, in a sense, the burden is being put on the Court to call him.

And then, your Honor calls him and he invokes the Fifth Amendment in the presence of the jury. This is extremely prejudicial to us.

THE COURT: Well, Mr. Carolan is here representing Mr. Vernale.

MR. HENNESSEY: I don't know if your Honor

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wants to address Mr. Carolan directly with respect to his feeling. I should say this, your Honor; It is my understanding, and certainly I am sure the State has not talked to Mr. Vernale in the absence of Mr. Carolan. I would hope not, since they would not have any right to do that under the canons at this point.

I am aware of what Mr. Carolan has told me what his advice would be, since Mr. Vernale is charged in, I understand what was originally a two-count information in which Mr. Moynahan was being charged with being a co-conspirator with Mr. Vernale.

That charge, as I understand it, and other charges relating to all these transactions that have been opened up, are cases pending in this Court and, therefore, it is obvious that Mr. Vernale's rights would be seriously prejudiced if any inquiry were made.

THE COURT: But, Mr. Hennessey, you don't have the right to make these claims. You, as counsel for Mr. Moynahan, have no standing to make any claims with reference to whatever rights Mr. Vernale has.

MR. HENNESSEY: Well, let me try to explain. I keep going back and forth over the thing.

* * * *

if necessary.

You have no rights there.

MR. HENNESSEY: I am claiming, your Honor, that if the State calls a witness with any forewarning that this witness is going to invoke the Fifth Amendment in front of the jury, then I would submit that this would be prejudicial.

THE COURT: The State has a right to call the witness. If Mr. Vernale wants to invoke the Fifth Amendment, that is up to Mr. Vernale. Then the Court must make a determination as to whether or not he must answer. But the regular procedure is that the State has a right to call any witness it sees fit.

MR. HENNESSEY: Well, I am expressing that as a ground of objection, your Honor, and in making a request that your Honor make inquiry in the absence of the jury to determine whether or not such an invocation of the Fifth Amendment is going to be made, so that it will not occur in the presence of the jury. That is, I make that motion, your Honor.

THE COURT: Your motion is overruled.

MR. HENNESSEY: Exception, your Honor.

THE COURT: Exception may be noted.

Now, gentlemen, do you claim that the Court

has a right to call this witness?

MR. GAFFNEY: Yes, sir.

THE COURT: I would like to see some authority on that. I am not aware of it.

MR. GAFFNEY: Well, if the court please, I think the general authority is that a party must vouch for the veracity of its witnesses. In other words, we must vouch for the truthfulness of Mr. Vernale if we call him, and frankly, we cannot do that, and we represent that to the Court.

THE COURT: I, frankly, am unaware of any point of law on this issue, gentlemen.

MR. GAFFNEY: May we have the opportunity to see if we could get you some specific authority on it.

I know it is a common practice in the Federal Courts.

THE COURT: I am not aware of it. I will be very frank, gentlemen. This is something very new to me.

I am not aware of it. Now, if you can show me some authority, I will consider it.

MR. GAFFNEY: Thank you, your Honor.

THE COURT: We will take a short recess, Sheriff.

(Recess.)

(Court resumed -- still in the absence of the jury:)

THE COURT: Is there anyone in the spectators' section connected with the newspaper, radio, or television media? If there are, you are asked to leave the room. This is a pre-trial hearing.

As soon as the regular procedures are reinstituted, you may return to the courtroom.

Gentlemen, I am not completely satisfied that a pre-trial or what we call a dry run of Mr. Vernale's position in this case is proper. If you gentlemen agree that it should be done, I will accede to that request.

MR. GAFFNEY: The State does not agree.

THE COURT: The State does not?

MR. GAFFNEY: No, sir, as I understand the line of cases, it does not concern this particular situation.

MR. HENNESSEY: I have already made my motion, your Honor, and your Honor has denied it. And just for the record, I have furnished your Honor a line of cases cited, I believe, in 86 A.L.R. 2d, 1443, and those cases subsequently decided in the supplement, including

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the De GeSualdo case, and cases showing to support me, so that your Honor will know on the record that my claim is based on what I believe to be a line of case law in support of that position.

THE COURT: You see, Mr. Hennessey, the cases which I have read, of course, I perhaps should have taken a little more time in doing this, but the cases I have ~~read so far~~ all were cases were after the privilege was invoked by the witness, the State persisted in reading into the record in the presence of the jury certain confessions and statements made by the witness which the Courts have said prejudiced the rights of the defendant.

Of course, I do not intend to go that far in this case, but it is my feeling offhand that they have a right to call Mr. Vernale initially to determine what his position is in the presence of the jury, and then from then on the court must make a determination as to how far the State has a right to go.

It would seem to me they should not be restricted in not calling him at all, because they don't know what his position is.

That is the representation that has been made to me; is that correct?

MR. GAFFNEY: That is correct, your Honor. I would like the record to be crystal clear on that point, that we frankly do not know what Mr. Vernale is going to testify to.

THE COURT: You don't even know if he is going to balk as a witness?

MR. GAFFNEY: No, I don't know.

THE COURT: You don't know if he is going to testify friendly?

MR. GAFFNEY: That is correct.

THE COURT: Or be hostile, or is going to invoke his privilege?

MR. GAFFNEY: Not through personal conversation with Mr. Vernale, but through his attorney, I know what his attorney advised him. His attorney indicated to me he does not know what Mr. Vernale is going to do when he is called as a witness. So the State certainly has no notice of this whatsoever.

MR. HENNESSEY: I did want to make it clear that my information is that the advice of Mr. Vernale's attorney to Mr. Vernale will be to invoke his provilege against self-incrimination. And it appears from the fact that the State has

expressed this prior concern, is an indication to me that they have at least a belief that he may do this, or he may not.

I think they are representing in all candor they do not know, but he might very well do this.

THE COURT: Well, the public defender is here to protect Mr. Vernale's rights.

I am going to summon the jury into the courtroom, gentlemen, and ask you to call any witness you intend to call, and then we will proceed from there.

MR. HENNESSEY: All right.

MR. CAROLAN: Excuse me, your Honor. But prior to the jury being called in, I would object to the calling of Mr. Vernale on the ground that he is not physically or emotionally capable of being called as a witness. The State will concede that he does have a heart condition, and he has been confined in the hospital ward in State's Prison.

MR. GAFFNEY: Your Honor, we have been in contact with the prison doctor, and he has indicated in his professional opinion that Mr. Vernale can testify.

THE COURT: He can testify?

MR. CAFFNEY: He can testify.

THE COURT: Well, all right. Summon the jury.

MR. HENNESSEY: Excuse me. Could I state so as to make the record clear, your Honor, I apologize for being so lengthy, but my position is that your Honor's reference to the invocation of the Fifth Amendment and subsequent use of statements is, as I recognize, covered by the case of Pointer vs. Texas, 380 U. S., which deals with the Sixth Amendment, the right of confrontation of the defendant.

I am likewise invoking the Fourteenth Amendment and due process rights of a defendant in claiming that in a situation where the court has a forewarning of the intention of a person who is related to the transaction, who is or was a co-indictee or is mentioned as a participant in the crime that is involved, that when that situation arises, and further, where it is clear on the record that the man has a valid reason for invoking the privilege in that he is presently under arrest and charged with crimes related to the very situation that is in issue here, that under those circumstances it is my position that the Court should make inquiry in

advance, in the absence of the jury, to make the determination as to whether or not this privilege is to be invoked, since the invocation of this privilege in the presence of the jury would constitute prejudicial error, and I claim it under the Fourteenth Amendment.

THE COURT: Which case do you refer to specifically?

MR. HENNESSEY: I am referring, your Honor, if I might be permitted to examine this book, please, to people vs. Myers, in 35 Illinois 2d, 311, 220 Northeast Reporter, 2d, 297. And I will state to the Court that I cannot represent the facts of this case, that in that case, as I read from the annotation in 86 A. L. R. 2d, 1443 to 1456, that that is a practice which is condemned, that it was shown to be prejudicial error.

THE COURT: Just a minute. Excuse me, gentlemen. No one is to come in here until you make inquiry if they are in any way associated with any radio, television, or paper media. You are not to let anyone in the courtroom.

All right, proceed.

MR. HENNESSEY: I cite, also, the cases,

other cases cited in this annotation.

THE COURT: Well, the Illinois case doesn't seem to hold exactly what you have said, Mr. Hernessey.

The only question before me is whether or not the State has a right to call Mr. Vernale as a witness. It would seem to me that the State does have that right.

Now, what happens from that point on is a matter to be determined depending upon his answers.

Now, that is the way the court feels at the moment, unless you could show me otherwise.

Mr. Gaffney represents to the Court that they have no way of knowing what his position is going to be, and in view of that representation I don't see why we should proceed in any other different fashion.

Summon the jury.

MR. GAFFNEY: Your Honor, will Mr. Vernale be called as a Court's witness?

THE COURT: No, I am not going to have him called as a Court's witness. You may call him as a State's witness.

MR. GAFFNEY: May I have an objection to that ruling, and an exception?

THE COURT: An exception may be noted.

MR. GAFFNEY: Thank you.

THE COURT: The newspaper men may come into the courtroom now, Sheriff.

(Jury returns to courtroom.)

THE COURT: All right, Mr. Gaffney, or Mr. Secor.

MR. SECOR: I will call Charles Vernale.

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C H A R L E S J. V E R N A L E, called as a witness on behalf of the State, being first duly sworn, testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Charles J. Vernale.

THE CLERK: And your address?

THE WITNESS: Well, State's Prison.

THE CLERK: Please be seated.

DIRECT EXAMINATION

BY MR. SECOR:

Q. Mr. Vernale, where are you living at the present time?

A. Minimum security, Osborne Division of the State Prison. It is the minimum security division, they call it.

THE COURT: Mr. Vernale, would you please keep your voice up.

THE WITNESS: Yes, sir. Minimum security division of the State's Prison. It is the minimum security.

BY MR. SECOR:

Q. How long have you been at the State's Prison?

A. Thirteen months with this one here.

Q. Mr. Vernale, do you know the defendant, Paul Moynahan?

A. Yes, I do.

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Q Is he in the courtroom at the present time?

A Yes.

Q Can you point him out to the ladies and gentlemen of the jury?

A Over there (indicating).

Q How long have you known the defendant, Paul Moynahan?

A I would say about six or seven years.

Q And could you tell the ladies and gentlemen of the jury what your relationship was with the defendant, Paul Moynahan?

A Strictly friendship, as far as I am concerned.

Q You were good friends?

A Well, friendship. I had a lot of friends in the city.

Q And the deputy was one of your friends?

A I considered him so, yes.

Q And tell the ladies and gentlemen of the jury something about your friendship. What did it involve or entail, for example?

A I would like to take the Fifth Amendment on that for the simple reason I don't want to incriminate myself in any way. This is not my trial.

No Objection Eaglin

Q All right. Were you ever an informant for Mr. Moynahan?

A Never. I was never an informer.

Q Did you ever give him any information of any kind concerning criminal activities?

A. I take the Fifth Amendment on that. I don't want to incriminate myself in any way, also.

Q Did you ever make a gift of a television set, a color television set, to Mr. Moynahan?

A. I take the Fifth Amendment on that. I don't want to incriminate myself.

THE COURT: At this point the jury is excused.

Gentlemen, I shall take a short recess at this point and ask the guards here to return Mr. Vernale downstairs until I resume Court.

Short recess, Sheriff.

(Recess.)

(Court resumed.)

THE COURT: Sheriff, the news media may remain in the courtroom.

You may summon the jury, Sheriff.

(Jury enters the courtroom)

THE COURT: All right, you may proceed, Mr. Secor.

DIRECT EXAMINATION CONTINUED BY MR. SECOR:

MR. SECOR: Under the circumstances, we have nothing further of this witness.

THE COURT: Well, is Mr. Vernale here? Call Mr. Vernale in.

(Witness resumes the stand.)

THE COURT: Mr. Vernale, you may be seated. Mr. Secor, do you have any more questions?

MR. SECOR: Nothing further under the circumstances.

THE COURT: Mr. Hennessey, do you have any questions?

MR. HENNESSEY: I would ask your Honor first that the State produce all statements in their possession, any signed statements, any copies of any written transcripts given by Mr. Vernale to any official of the State of Connecticut pursuant to Public Act 680, and also under the rule of Judge Barber.

THE COURT: Mr. Gaffney, do you have any statements relating to the testimony of Mr. Vernale?

MR. SECOR: Well, the State objects to this.

THE COURT: The objection is overruled.

MR. SECOR: Your Honor, it is going to take a considerable amount of time to segregate

CROSS-EXAMINATION BY MR. HENNESSEY:

Q Mr. Vernale, there was a question that was asked you, and I am not sure that I recall what your answer was. And I believe that the question was: What was your relationship to Paul Moynahan? And am I correct that your answer was, "A friend, I thought," or, "A friend," or what was your answer?

A It was something like that, yes.

Q Is that what the answer was?

A Yes.

Q Now, I believe you also testified, did you not, that this encompassed a period of years.

A Well, somewhere between six to ten. Six, somewhere around that. I don't exactly recollect.

Q All right. And did you say that at some point you had some doubt as to whether or not he was your friend, at some point since all this stuff had started, you developed some doubt as to whether he was your friend?

A It is a possibility; I said that.

Q I don't know. Do you remember whether you did or did not?

A I don't recall.

Q Okay. Well, is it a fact, did there come a time when you developed some doubt in your mind as to whether he

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was or wasn't your friend?

MR. SLOOR: Mr. Hennessey, would you mind stepping to one side or the other so I can observe the witness?

A Well, I don't recall.

MR. HENNESSEY: Possibly could you move your chair?

THE COURT: What was that question again? Just a minute.

Read the question.

(The pending question was read back by the reporter.)

BY MR. HENNESSEY:

Q Well, then, is it your testimony, Mr. Vernale, that at all times, as far as you were concerned, your relationship with Paul Moynahan was that of a friend?

A That is the way I thought. That is the way I always thought it was.

Q Sure, and as far as you were concerned, and when you say that is what you always thought it was, you mean all the way up until the time you went to jail, and even then, even after that when you were up in the prison?

A Well, I never associated too much with him after we got back from Florida.

THE COURT: Are the members of the jury able to see the witness?

MR. HENNESSEY: I am sorry. I would seem to be blocking everybody's view.

THE COURT: That's all right.

MR. HENNESSEY: I will try from over here.

BY MR. HENNESSEY:

Q When was that, Mr. Vernale? You make mention of that trip. Do you remember when that was?

A Sometime in March of 1968.

Q So it was up until that trip in March of 1968, and for a number of years prior, you and Mr. Moynahan had a relationship which you considered to be that of friends?

A That is what I always thought it to be, yes.

Q Very well. But, in any event, after March of 1968, that relationship broke off to a large extent; right?

A Mostly broke off, yes.

Q I take it you still see Mr. Moynahan on occasion?

A Very few occasions. Very, very few occasions.

Q Before that time, before March of 1968, you would have seen him on various occasions. You did see him on various occasions, did you not?

A Yes, various, yes.

Q And that included your boat?

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A What is that?

Q You had a boat?

A Yes.

Q And you would go out fishing with him on the boat?

A That is right.

Q And he would come over to your house sometimes on Sunday nights and have a cup of coffee with you?

A Yes.

Q And I think one time you went over to his house for Thanksgiving dinner?

A I think so, yes.

Q By the way, did you eat at his home?

A I did.

Q On other occasions?

A Yes.

Q Would this be for dinner or lunch or what, Mr. Vernale, or both?

A No, I was invited to dinner one day. That is all. Because I am a bachelor, and I live by myself, and he had the courtesy to invite me over.

Q All right. And that was a dinner in his home with other members of his family present?

A Yes.

Q And you were there as his guest and his friend?

A That is right.

Q Now, then, there was also the trip to Florida that we have heard about. Actually, you went down to Florida, did you not, with someone else? You drove down to Florida that particular time with someone else?

A It was March 8th. I recall that I left Waterbury at five o'clock in the evening to go to Florida, yes.

Q In what year, Mr. Vernale? March 8th, when?

A It was March 8, 1968.

Q That was when you went down, I think, with Lt. Griffin; right?

A Yes.

Q And there were two ladies, were there two ladies in the car?

A Well, I was supposed to go alone with Mr. Griffin. And then these two ladies are from Ansonia, and one of them had a sister In Ft. Lauderdale, who was in the real estate business. She asked me if I could find room to drive them down, to do them the favor to take them down, which I obliged, because I figured there was no extra expense in gasoline. So I thought I would take them to Fort Lauderdale and leave them there and then go on my vacation with Mr. Griffin.

Q Well, was that a mother and daughter, those two ladies?

A Yes, it was.

Q What are their names?

A Well, daughter's name was Nikos, Leslie Nikos, and the mother's name was -- it wasn't the same. Gambardella, or something like that.

Q I think it was the time as you were going down that you got involved in an automobile accident?

A Yes, I did.

Q Going down; right?

A Yes, I did. I went off the highway five o'clock in the morning, too.

Q As a result of that, Lt. Griffin sued you, I think?

A And also the two women.

Q And they sued you, too?

A Yes, sir.

Q And that was a big part of the reason you got upset after March, wasn't it? In other words, you got angry because Lt. Griffin sued you?

A I didn't get angry, no. I didn't get angry. Well, I was insured, anyway. It was an == it was immaterial to me whether they sued me or not, because I had insurance. So why should I get angry?

Q So, anyway, subsequently, you did get down to Florida. You got another car?

A I bought a 1968 Cadillac, yes.

Q And it was then that you met Mr. Moynahan down in Florida, he and his wife; isn't that true?

A No. I was supposed to pick him up on the return trip, him and his wife.

Q They were staying down there?

A That is right, they were staying at some hotel.

Q Then you drove the car back and Mr. and Mrs. Moynahan came back with you?

A Yes, that is right.

Q As I recall it --

A There were only the three of us that came back alone. That is all.

Q As I recall, you shared expenses?

A That is right, we shared expenses.

Q But after that return trip from Florida, things kind of tapered off? between you and Mr. Moynahan?

A After what?

Q In other words, after you got back from Florida, that is when you said things kind of tapered off between you and Mr. Moynahan. You didn't see him very much after that?

A No, I didn't see him too much.

Q Excuse me?

A I didn't see him too much after that, no.

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Q All right. Now, finally, you were asked a question on direct examination. I think the question was: Did you ever give Paul Moynahan a television set? And I think you said, "I take the Fifth on that."

A That is right.

Q Am I correct in saying that your intention, Mr. Vernale, is to take the Fifth on any inquiry about television sets?

A No.

Q You are not going to take the Fifth?

A No. I am willing to plead guilty for receiving stolen goods, which I told my lawyer that long ago.

Q So you are willing to testify to some things and not to others?

A That is in my case. I do not want to incriminate myself. That is the only reason I took the Fifth Amendment.

MR. HENNESSEY: Okay. Thank you.

Excuse me, your Honor. Just one moment, please.

THE COURT: Sure.

MR. HENNESSEY: That is all I have. Thank you.

MR. SECOR: No questions, your Honor.

THE COURT: You may step down.

(By Mr. Gaffney) Now, we know that later on his testimony is going to change. As a matter of fact, he is going to say, "Oh, yes, I had a color TV set in the house. As a matter of fact, I had such a color TV set and I had three repairmen in to repair it. I paid these repairmen a total of twenty dollars, I believe."

But when he is first asked, "Did you ever have a color TV set In your house prior to the gift from your son?" his answer was, "No." He didn't remember this. He didn't remember paying repairmen twenty dollars. He didn't remember this five weeks that it was there and he had such trouble with it. That is the initial interview.

Now, the investigation continues. I think there were dates now in February 17th, 18th, 21st. You will have the statements in evidence before you when the State Police go up and they talk to an Edward Miller. You all met Mr. Miller, a TV repairman.

Now, this is before the TV set which is State's Exhibit K, I believe, in the back of the courtroom, is ever found. It is not even in the picture yet. Edward Miller says to the Connecticut State Police on these three occasions, "I repaired a

television set in the home of the defendant. I can identify my own work product. I know what I did. I remember it. It was a Sunday morning."

And he got a call from the assistant superintendent of police of the City of Waterbury. It doesn't happen every day. It had never happened to Ed Miller before. And he goes up to the home of the defendant and he made the repairs and he tells the State Police about it. He told Trooper Smith, Corporal Smith -- I have demoted him -- he tells Corporal Smith, Corporal Jacobson. He tells Captain Bishop in great detail what he did. "If you find this set this is what you will find."

And you remember the testimony. He told them in detail what he did. It was not a usual repair, not just one tube out and another tube in. It was a unique repair. That was in February, the middle of February.

The investigation continues and suddenly, bang! It blows up here in Waterbury, because it makes the front page of the Waterbury paper.

March 8th, it is a Saturday, and it is on the front page, "State Police Are In Town," the rumors are verified. Here it is on the front page

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February 1st -- I am sorry -- April 1st, April 1, 1969, a smashed, demolished television set is found up in the Waterbury-Plymouth line. The State Police are called, pick up the set, and you have it before you.

What do we find out? There is a serial number. We check the serial number. The State Police do, and find that this is a stolen set. It is a new set smashed up in a desolate area, the Plymouth-Waterbury line.

Now we start backtracking. Where did it come from? It came from North Haven. Isn't it strange, ladies and gentlemen of the jury, a set stolen from North Haven should suddenly be found smashed up in a desolate area approximately seven miles from the home of the defendant in Waterbury. From North Haven to Waterbury, and it is found in the middle of this investigation. It wasn't in Bridgeport. It wasn't in California. It is seven miles from the home of the defendant, and it is found in the middle of this investigation.

Now, what happens? Ed Miller, the TV repairman, is interviewed. He is again brought down and told, "Take a look at this set, Mr. Miller. You

told us about repairs you made to a set in the defendant's house. Take a look at this set."

And Ed Miller testifies, well, at that time he stated, "No question in my mind, that is my repair. I cannot see all of It but I can see the bottom of it and I can recognize my soldering marks. That is my repair. That is the set."

And he described again in detail to Trooper Smith when Jimmy Smith took the set in the trunk of his car down to Ed Miller's shop, he told Trooper Smith, "Lookit, if you take this out, you are going to find such and such. You are going to find a black tape." Unusual, according to Mr. Kramer, the expert. Very unusual to put this black tape. Ed Miller said it would be there, and he said it was there because wires were soldered. You remember Mr. Kramer's testimony. That is what they found, the wire fell off with the tape when they took it off. One hundred per cent dovetails with Mr. Miller.

We go on. Well, the next date, really, is April 9th. John Bishop is now re-interviewed. There is some discrepancy here, no question about it, some discrepancy way back in late 1968 John Bishop was talking about thirty or forty breaks. Now, with

anything," he told Captain Bishop -- only. "I wouldn't take anything," despite this friendship with Charlie Vernale. "I wouldn't take a thing from him. As a matter of fact, I should have warned my son, Timothy, not to take the air conditioner. I should have warned him."

So we have the thief, we have the fence, we hae the delivery, we have knowledge, we have concealment which is also required because the defendant although he doesn't put a blanket over it in his home, we hae concealment within the letter of the law. This is a necessary element. But it is sufficient if he has it in his house, away from the house of the true owner. This is enough.

Who is going to question a TV set in the home of the Assistant Chief of Police of the City of Waterbury? There is concealment. You don't have to put a blanket over it. It is concealment under the law. That is enough right there.

The State could sit down and rest. We have got a case. But the State goes further. The State presents Edward Miller, the repairman. The repairman comes in and he can identify it. I don't care if he did eight or nine hundred repairs that

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year or nine thousand repairs that year. He didn't do nine thousand repairs like this. He only did one repair like this and he testified to that. He only did one repair at the home of Paul Moynahan, the Assistant Chief of Police, and I think he might remember that, and he has testified he does remember it.

And, you know, the credibility of witnesses, all of the witnesses, from the State's Attorney, from McDonald and his wife, Mary, all the way down, every State Trooper, everybody has been challenged. How could you believe this man?

You are going to hear from Mr. Hennessey, I am sure. It is just incredible, but now there is one guy in this case that we can believe, if anybody, including Mr. McDonald. I hope he is not listening, but there is one guy we can believe and that is Ed Miller, because Ed Miller told us, he said, "If you ever find that set, this is what you will find." Long before the set is even found. And lo and behold, that is what we did find, just like he said. This is one man that we know is telling the truth, because we have the evidence here in the courtroom.

The thief, the fence, the delivery, the

knowledge, the concealment, the repairman. Certainly a case, and a strong case, but we have more. We have the set itself demolished up in the desolate area, Plymouth. Out of North Haven, suddenly seven miles from the defendant's house, in a desolate area, right in the middle of the investigation. It is circumstantial, sure, but such incriminating circumstantial evidence against this defendant.

That is the State's case. But is there any more? Well, in this instance, there is more. Not on the State's part but on the defendant's part, and his son, Timothy, provided so much more in this case.

Now, with regard to Timothy, sure you expect loyalty on the part of a family member, and I think we saw loyalty to Paul Moynahan. But don't you expect just a little bit more from a member of the Bar or the defendant himself, a person who is sworn to uphold the law?

You know, justice is a seeking of the truth and for the truth. What has the defense done here by their actions? I am talking about Timothy Moynahan; I am talking about the defendnat. From the very outset they have tried to hide the truth by

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(By Mr. Hennessey) * * * *

from the Sheffler break."

How did you take it into the house? Did you go in the front or the back? "I can't remember."

That is what John Bishop told the police. Now, the police, having that information, certainly may have chosen to get warrants and go to Paul Moynahan's house in 1968, October of 1968, and there to search to see if in October of 1968 there was such a set. But they didn't choose to do so.

Then, what happens next? Somewhere along the line they encounter Mr. MIller, and you have heard the testimony of Mr. Miller, and I think all I can say about the testimony of Mr. Miller is that it again was inconsistent. So inconsistent I felt that we have offered as exhibits those portions of the statement taken by the State of Connecticut, by the State Police, from Edward Miller, so you could look at them in the jury room, and you can see what he said before this set was found.

When he was asked, "Did You go to the Moynahan house?" "Yes, I did."

Did you make some repair? "Yes, I did."

On what kind of a set? "Gee, I can't

remember. I think it was a console, but as far as the year, the make, the model, I don't remember."

And what did you do? And therein you will see described what he said he did, as far as repairs are concerned.

So at that point -- I guess that was in February when they talked to Mr. Miller -- I don't know when it was, the first time he was talked to -- he said he was only talked to three times, but apparently he was talked to more than three times. He apparently forgot about being talked to by Trooper Jacobson, and he forgot about certain other oral conversations that were had with him, but, in any event, he was talked to on several occasions.

Apparently he was focused on as a person who had relevant information, and the State Police went and tried exhaustively to probe his mind to determine what facts were there. And as to his recollection of any set like this, he had none, before he saw it. None.

He remembered a console. I mean, what is that? I guess just about every color television that has been coming out in the last couple of years are probably consoles. Certainly they were inthe

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beginning, the first few years.

You have heard from Mr. DeMartin tell about all the different kinds of consoles and you know just identifying a set as a console doesn't really mean very much. Identifying it as a color console, what does that establish?

But the point is that we say, well, the State says one thing about Mr. Miller, "He remembered the repair."

Now, what can I say about that? IT could be that maybe Mr. Miller did that repair in the Moynahan home. I don't know. Maybe he did a repair like that. I don't know. Maybe he did that repair on that set. I don't know. Supposing he did? I don't really know. I don't know that there has been any proof about the uniqueness of soldering. He did examine this and he was a skilled man and he observed there was soldering on the bottom of that set. He did on a subsequent occasion inform them that they would find tape and they would find soldered copper wire.

So the question becomes: Did he do that repair? And if he did that repair, must we conclude that he must have done it at the Moynahan house?

Well, I would submit the answer to that is certainly that doesn't necessarily follow, because when you weigh Mr. Miller's testimony, you weigh it like any other witness. You recall whether or not he had inconsistencies; whether or nothe was able to recall facts concerning other events at other times; whether or not it would be logical and reasonable for him to have a particular recollection of this one event, as opposed to other events, because he is recalling an event that doesn't have any particular meaning to him except that was another repair job, and it was done at the Moynahan house.

And he was surprised that he got the call, but he went up there and apparently spent an hour, didn't even want to get paid, didn't even want any money, because when he did work on Sunday, they were just gratuitous, they were just courtesies for a stranger.

But why do I stress Mr. Miller? I stress Mr. Miller here because there are a lot of things about Mr. Miller's testimony that leave questions that would cause you to wonder.

First of all, if he didn't repair this set at the Moynahan house, where did he repair it?

Well, maybe he repaired it at Mr. Vernale's. He did work for Mr. Vernale. If he didn't repair it at Mr. Vernale's house, how about the people that Mr. Vernale sent him to to do repair work on sets?

And if he didn't do that, maybe it was one of those sets he bought from Mr. Vernale. He bought two sets from Mr. Vernale, himself. You will have the books of Miller & Fellin, his company. You can look at those books. You can see the clear documentation of every transaction that was done by that company which Mr. Miller said he worked for full time when he did some repair work, and then he didn't even keep track of the money he received because he thought it was tips.

Well, look through the books and see if you can find the sale to Stevens or a sale to Gaspari by Miller & Fellin. Look through those sheets and see what kind of repair bills you find for Charles Vernale out of those 938.

I submit I am not attacking Mr. Miller. I am not necessarily putting him on trial here. I am just suggesting certain things to you that you should take into consideration. Was Mr. Miller's recollection always so precise and clear? I submit it was not.

You have the statement and you can see it.

Further, when he testified before the Grand Jury under oath, he admitted he made a mistake there about selling a set to Mrs. MacIntosh in Wolcott. He testified he bought a set from Charles Vernale and sold it to Mrs. MacIntosh in Wolcott, a transaction which would seem to be vivid if you only sold three sets. He made a mistake about that because he never really did it.

And if the State tries to stress that this is the only time Mr. Miller ever did that repair, well, actually, he didn't even say that. He said he did, three times, the same kind of repair. So does that diminish the chances that that repair was done in the Moynahan house?

What if he had come to the house, and what if, out of those 938 people you could find some slips on that will show some sound repair. Could he say, "That was the chassis in George's house, because I remember I did that repair"?

And then, against that we have offered to you two witnesses, Paul Moynahan and his wife, who take issue with the amount of repair work that John Bishop did in their house on the day that -- excuse me --

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Edward Miller did in their house on the day they said he came. That is where questions of doubt arise. That is where the question of the weight of the evidence becomes significant. When you place two witnesses on the stand you have to weigh, "Do I have to believe this person one hundred per cent and that person no per cent, or do I believe him sixty per cent and I believe that person thirty per cent?" This is how you have to weigh things. When you look at all the testimony, you have to weigh it very closely and very clearly.

Now, finally, I think the State glossed over a little bit about John Bishop's testimony as to why he, all of a sudden, recalled, after the set was found, and after he was shown a picture, he then all of a sudden recalled. Bishop did not testify that this picture brought back his entire recollection. You will recall he testified rather that having gone in front of the Grand Jury a second time, testifying a second time under oath, as to things which subsequently turned out to be wrong as to dates and times and places, and make and model of set, sitting in his jail cell over the course of the next ten days, he began to try to focus on this thing.

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that it is better that they do, because there are a lot of ways to get people to answer questions. But the point of it is, legally he doesn't have to. And, further, Captain Bishop warned him of it. He could have had a lawyer on February 8th when he talked to them. He didn't. He talked to them. And they tried to show that he must have known, he must have known that the set that he supposedly received was stolen, because he must have known that Vernale was at that time stealing.

Well, I don't think that is what Paul Moynahan said, and I don't think that is what he claimed, because Captain Bishop testified as to the substance of his recollection and then I examined him as to the questions themselves, word for word, question and answer. Paul Moynahan said, "Of course I didn't know he was stealing. If I thought he was stealing or he had stuff there, I would have arrested him, because that is my job."

He said, "Yes, I knew Charlie was bad, but Charlie hadn't been arrested in twenty years for breaking and entering or stealing. He had been arrested for pool selling. And this brings in Paul Moynahan's infamous son who defended him in a

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can only say to you this, that the question of knowledge really brings us over to our defense, because what the State has really done is to try to just throw in the whole character of Paul Moynahan and say to you in effect, "He is a bad man. He is corrupt. He is evil."

Now, Edward Burton says we should weed him out. Well, what do they offer to prove that? That he had an open and notorious friendship with Charles Vernale? He didn't conceal that. That was known. It was known in his department. And what kind of a relationship was it?

You know, trying to make it, you know, Charlie shoveling money over to Paul Moynahan. That isn't what it was at all. Charles Vernale came to their house for Thanksgiving one day because Paula Moynahan invited him, because she liked him. Charles Vernale maybe was in their house two times besides that, in ten years, to eat. Charles Vernale traded a used chair with Mrs. Moynahan. Mrs. Moynahan used Charles Vernale's services to print some tickets for her daughter's graduation party. Charles Vernale's services were used to print the tickets for Paul Moynahan's testimonial. Charles Vernale gave them a

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ride back from Florida and I don't know, you know, you kind of throw these things out and I think you get a picture of the Moynahans lying in some big place on a beach in a hundred-dollar-a-day room or something with Charlie Vernale paying the tab.

You heard the testimony. They stayed in the boarding house. They went down there because their daughter was going to school. THey stayed in a boarding house. Charlie Vernale came over and met them. They pooled their money and split the cost for gas and lunch and drove back to Waterbury.

I mean, that is not really evil.

And what, in addition, was the relationship of Paul Moynahan to Charles Vernale? I think it is clear and uncontroverted that one of the reasons why Paul Moynahan stayed friends with Charles Vernale was because Charles Vernale gave him information. He helped him out. And this is the life's blood of a police officer's work. Charles Vernale gave him information. And Paul disclosed that to Wayne Bishop. It was testified to the Terryville Bank robbery and other things.

We have tried to corroborate that with Mr. O'Donnell, who came all the way from California

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to say He went on a boat in 1964 and remembers the conversation. We have corroborated it with Lt. Salvatore of the Waterbury Police Department, who testified he also went on that boat several times fishing, and he also got information from Charles Vernale in addition to the bank job.

There is some logical reason for this relationship. Let's say there was no reason for it other than it was a friend, that he had a friend who had a record. Does that mean that if he has a friend that has a record, therefore anything he ever received from that friend was stolen? That is kind of cynical. That is not what life is all about. I mean, you know, what record, breach of the peace, Motor Vehicle, minor record, major record? What do you get to before you say, "Well, if you take something from that guy you ought to know it is stolen"?

But the point is -- and never forget -- that our defense to this is that he never took it. He never took it from him and he never took it from anybody else. And we gave the State every opportunity to come in and prove otherwise, that he did. You know, it is awfully easy to say, well, a man will just come in and lie to protect himself, but I submit to you we

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(By Mr. Secor)

Moynahan the night before, just before he came in the next morning to testify. I don't think I have to belabor that. You, ladies and gentlemen of the jury, know what was going on in that situation. It stands out like a sore thumb. And it was highly improper.

Now, Mr. Hennessey doesn't like the word "liar," and he told you that, so he avoided using it. But, you know, you don't have to use the word "liar" to be saying the same thing. And, of course, there was this protracted vitriolic intensive attack by Mr. Hennessey on Edward Miller. And why shouldn't there be? And, of course, they would say to you John Bishop, he is nothing but a crook, a breaking and entering guy, all his life. A professional. Who could believe him?

And Charlie Vernale, who was asked, "Did you give the defendant, Paul Moynahan, a color television set? Did you deliver it to him?" And he took the Fifth Amendment. He is not a very great guy.

Well, you know, we did not pick, Mr. Gaffney and I, and the State Police, we did not pick John Bishop as our buddy, and we certainly didn't pick Charles Vernale. We cannot help it if the defendant,

Paul Moynahan, has Charles Vernale as a friend. That is his privilege. He got some police information from him, too. That is his privilege. But those were his friends, not ours. And so we gave you their testimony, and we think it was confirmed by other facts in this case, in spite of their background. But let it be understood now that the people of the State of Connecticut are not representing to you, representatives of the people of the State of Connecticut, that we think John Bishop and Charles Vernale are any prize, lovely characters that we would all like to be chumming around with, or having any kind of business with, because we don't feel that way about them.

So, what do we have to do, says the defense, we have got to get at this guy Miller, and they had a hard time doing it. Why shouldn't you believe Miller? I will tell you why you should believe him. He had no axe to grind in this case. What possible motive could Miller have to say he repaired that chassis in the defendant, Paul Moynahan's, home, on a Sunday morning and tell the State Police, ahead of time, exactly what he did before the set was found? And then after the set was found, the State

Police uncovered it all and find exactly what Miller said he had done to the set.

Why does he do a thing like that? Is there some kind of inference in the background here that the Connecticut State Police got him to do it? There has been no evidence of that, not a shred of evidence of that.

Why would a man do a thing like that? He was interviewed by the State Police before the set was found, and he said, "Yes, I fixed a set in Moynahan's house," and he told them what he did. Once the set was found, you know, he had said what he had done, and he looked at it and found his work.

And I don't know this, but I will bet Mr. Miller wishes that, you know, that the police had never dropped around to his door. You don't think this was pleasant for him. He is not getting any great vicarious thrill out of being exposed to all this in a very intensive cross-examination by Mr. Hennessey. That is not pleasant to do.

He got in it because he was interviewed, but certainly not a shred of an indication of any kind why he would be motivated in some way or another to do harm or damage to the defendant, Paul Moynahan, and yet, don't believe him. And you read

over what he said, you read over in the light of your experience, and if you don't agree that what Edward Miller said made him the most plausible witness to be believed in the whole case, simply because, as Mr. Gaffney said, he told us what he did before we had the set and when we took the aluminum can off after we found the set, we found the very work inside that you could not see until the can was off. That was the proof he knew what he was talking about.

THE COURT: Six minutes.

MR. SECOR: Now, another thing about Miller is the defendant himself, you know, met him at Vernale's, and the defendant himself admits he was up to the house to fix the set.

Now, when you add all that together, ladies and gentlemen of the jury, I say you have got to be pretty unrealistic, I feel, not to believe that Miller was in that house and repaired that set as he said he did.

I really think it is just evidence in the immutable record that no matter how hard you cannot rub out, and Mr. Hennessey cannot rub it out, and he cannot rub it out with the sympathy approach of a long life in the same house, married to the same woman,

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such threat. It is for you to decide whether you will accept the explanation given by Paul Moynahan or whether you will decide that he freely and voluntarily intended to plead guilty to the charge of breach of the peace because he did, in fact, commit such a crime.

Now, you will also recall the testimony which was elicited from Timothy Moynahan to the effect that he was under arrest for receiving a stolen air conditioner. The law to be applied by you in this situation is this: Where a witness is under arrest for a crime growing out or closely related to the very offense for which the defendant is being tried, so as to form a part of the same occurrence or transaction, it is proper for the jury to know of the arrest as bearing upon the witness' interest in the immediate matter and for the purpose of indicating any interest, motive, prejudice, or bias on his behalf.

However, it is for you, in the exercise of your best judgment, to determine what weight, if any, you will give to such testimony.

You will also recall, members of the jury, that during the course of this trial, Charles Vernale was called to the stand by the State. While on the stand Charles Vernale was asked this question by the

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State of Connecticut:

"Q Did you ever make a gift of a television set, a color television set, to Mr. Moynahan?"

He was also asked:

"Tell the ladies and gentlemen of the jury something about your friendship. What did it involve or entail, for example?"

He was also asked:

"Q Did You ever give him any information of any kind concerning criminal activities?"

To these questions Charles Vernale invoked and exercised his Constitutional rights under the Fifth Amendment to the Constitution of the United States and refused to answer on the ground that the answers might tend to incriminate him.

Under our Constitution Mr. Charles Vernale had the right to refuse to answer those questions on the ground of self-incrimination. consequently, you are now instructed that no inferences should be drawn by you as to what the answers might have been. And, of course, you are not to draw any adverse inferences against Mr. Paul Moynahan by reason of the fact that Charles Vernale refused to answer the questions on Constitutional grounds or, for that matter, on any other grounds.

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THE COURT: I presume that is part of the process.

MR. EAGAN: Thank you.

We have already gotten No. 2, your Honor.

THE COURT: You have No. 2, so that is granted.

No. 3, you are entitled to supplementary information, but let's see how it should be limited.

Paragraph --

MR. EAGAN: We have asked for five individuals, your Honor.

THE COURT: I think that I could very well grant that all exculpatory information, and that is it. You don't need to limit it in any way. The statute provides for that.

MR. EAGAN: All right. We would like specifically to have the things that we have mentioned in here.

THE COURT: Unless they are exculpatory, of course, you don't get them. If they are, you are not limited.

MR. EAGAN: Would your Honor examine them to see if they are exculpatory in camera?

THE COURT: There has to be some showing at

this hearing before a Court will examine it. Of course, in the last analysis, there has to be some showing. You just can't have a field day.

MR. EAGAN: No, your Honor. There are 111 witnesses. Your Honor will notice we only put in for five that we have asked for the testimony, and I have reasonable ground for my thinking, that there is exculpatory information in these particular ones. That is why I requested these particular ones.

Of course, he would have to supply us with any others that he knows of.

MR. MC DONALD: He has named some people. He could interview them as well as we could. There is no requirement that we have to.

THE COURT: I am going to grant No. 3 and it is just applicable to exculpatory information.

MR. EAGAN: Your Honor, might I ask who will make the determination?

THE COURT: The State's Attorney on his oath will make that determination in the first instance.

MR. EAGAN: We would then go, I believe, to the last page, your Honor.

THE COURT: I have lost you on that.

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how can we go out and question them as Mr. McDonald says, all these witnesses are available to us to question? We don't know who was here. We knew a few, but we don't know who the others are.

Otherwise, how could we get evidence for our defendants?

THE COURT: Denied.

MR. MC DONALD: I object to No. 7, your Honor, as being wide-sweeping.

THE COURT: As to 6 and 7, I have granted all exculpatory material, and that ought to be as far as you are required to go.

Copies of any and all arrest warrants issued in this case. I suppose those are available to you, anyway.

MR. MC DONALD: They are available at the clerk's office.

THE COURT: Yes. So I won't order it. The State's Attorney could do that. They are available to you.

MR. EAGAN: All of that?

MR. MC DONALD: Anything that was filed is in the clerk's office.

MR. EAGAN: Your Honor, we would then move

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C A R L S T E V E N S , called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Carl Stevens, Major, Signal Corps, owner of Stevens Company.

THE CLERK: And your address?

THE WITNESS: Home address?

THE CLERK: Yes.

THE WITNESS: Thomaston, Connecticut.

MR. SECOR: Your Honor, the State has reason to anticipate what this offer is about, and we would like to be heard on it in the absence of the jury.

THE COURT: The jury may be excused.

(Jury leaves courtroom.)

(In the absence of the jury:)

THE COURT: I will hear you, Mr. Secor.

MR. SECOR: We may be anticipating, but out of an abundance of caution, we want to make it clear that if this witness, if it is contemplated to interrogate this witness about the purchase of any television sets from Edward Miller, that it is irrelevant, completely immaterial, and has no part

in this case, and it is not permissible under the very brief that the defendant submitted yesterday, attacking the character of a witness. And we want to make that clear.

Now, if we are wrong that that is the reason the witness is being offered, that is another matter.

THE COURT: Mr. Hennessey.

MR. HENNESSEY: Mr. Wade is going to examine.

THE COURT: Mr. Wade, what is the purpose of this?

MR. WADE: We do intend to show a purchase of a TV set by Mr. Stevens from a Mr. Miller. However, I would point out we are certainly not offering any testimony from Mr. Stevens relative to the character or reputation of Mr. Miller at all, and I agreed with Mr. Secor that such evidence would not be admissible under the law, that I cited to your Honor in my brief.

We do intend to explore the purchase of the set from Mr. Miller.

THE COURT: A set?

MR. WADE: A set Mr. Miller has already

testified to.

THE COURT: Is that set related in any way to the transaction under consideration?

MR. WADE: It is related to testimony in the case, your Honor. Mr. Miller has testified when he was put on as a State's witness that he sold a color TV set to Mr. Stevens and he sold another color TV set to a Mr. Gaspari.

We have Mr. Gaspari standing by as another witness and we intend to explore when the set was purchased, by whom, where it is now, and that is the extent of our examination.

MR. SECOR: And we consider that highly improper, irrelevant, and immaterial in this case, and you and we know, your Honor, what the objective here is. They weren't able to attempt to attack Miller directly on the stand because of the law, and now this is a circuitous route to try to get about the same way, and there is case law that even though Miller, even though he could have been cross-examined about this very matter when he was on the stand, there is case law that independent proof through other witnesses concerning that matter cannot be offered.

Now, in the Miller case, he wasn't even able to be cross-examined about it under the law, and certainly they cannot drag in via the back door outside witnesses about the purchase and sale of sets that have nothing to do with this case.

THE COURT: Are you claiming that the set which was sold by Mr. Miller to Mr. Stevens is connected in any way with a television in this matter in this case?

MR. WADE: It is our claim, your Honor, that Mr. Stevens purchased a color TV set from Mr. Miller in approximately June or July of 1967, that subsequently that set was removed from his house by the State Police, and he was advised that the set had been stolen.

We have testimony from Mr. Miller that he received the set that he sold to Mr. Stevens from Charles Vernale. We have testimony from Mr. Miller that he received the set he sold to Mr. Gaspari from Mr. Vernale.

Therefore, it is our claim that we can approach the question of Mr. Miller's bias or interest in this case by revealing to the jury that he, himself, was dealing in stolen color TV sets.

We feel that by presenting the simple evidence through Mr. Stevens, that he bought a set that Mr. Miller admitted purchasing from Mr. Vernale, that the jury will be entitled to draw an inference as to Mr. Miller's own connection with stolen color TV sets.

Secondly, we feel that this offer is permissible in order to show, to raise the question about the identity of the set that Mr. Miller has testified to.

THE COURT: Are you claiming that Mr. Stevens got a Motorola?

MR. WADE: That is right.

THE COURT: A console from Mr. Miller?

MR. WADE: I am, your Honor.

THE COURT: I will see you gentlemen in chambers.

(Recess.)

(Court resumed.)

THE COURT: Okay, bring in the Jury.

(Jury enters courtroom.)

THE COURT: Members of the jury, once again I am going to excuse you early for lunch, and ask you to come back at two o'clock with the usual

proof would be sufficient. If youstate for the record what Mr. Stevens would testify to, I think that would be sufficient to protect your rights.

MR. WADE: All right. There are certain matters that I believe your Honor indicated he will allow us to go into as to from whom he bought this set, the way Mr. Miller was doing business when he dealt with Mr. Stevens.

We understand, and we will not be allowed to go into the matter of whether or not the set Mr. Stevens --

THE COURT: Is there anybody in the courtroom connected with any newspaper, radio, television media?

All right, you may proceed.

MR. WADE: We understand we will not be allowed to go into the area of whether or not the set Mr. Stevens purchased was itself stolen, so if I could make my offer of proof On the record as to include that area, and ten put him on for the purpose of exploring the business relationship between Mr. Stevens and Mr. Miller --

THE COURT: Well, of course, I have no way of knowing what is allowable and what is not allowable

unless I hear the testimony which is offered.

MR. SECOR: The State's position is that anything that this witness might tell us, based on an offer of proof, would be inadmissible. I think we are off on a collateral matter.

THE COURT: With respect to this one issue, as to the manner Edward Miller was doing business, a trade name?

MR. SECOR: That is correct.

THE COURT: It seems to me that might be admissible.

MR. SECOR: Our position would be this is a collateral matter, and counsel is attempting to introduce a collateral matter to test the credibility of Mr. Miller.

THE COURT: Of course, you have got to remember Mr. Miller's testimony. He did say, and correct me if I am wrong in my recollection, that there were times on Sundays, and I guess he said on some other occasions when he did not operate under his corporate or partnership name. Wasn't that the gist of his testimony?

MR. SECOR: Yes, sir, and as a matter of fact, when he testified about these two sets that we

are talking about, the Stevens set and the Gaspari set, my recollection is that Mr. Miller was not asked as to whether or not he did this as a private man or did it for the partnership. So, as a matter of fact, we are now introducing testimony on a collateral matter on which Mr. Miller has never testified to.

We are now trying to attempt to contradict him on a collateral matter and he, as a matter of fact, never said he did this as partnership business.

Now, that is my recollection of Mr. Miller's testimony.

MR. WADE: My recollection, your Honor, is that he moonlighted on repairs, that he went out on week ends and did repair jobs for which he did not account to his company because this was on his own time, and sometimes these repairs were referred to him by Mr. Vernale.

But my recollection is not about sales, as far as I can recall, Mr. Miller indicated, as far as the sales of TV's were concerned, this was Miller and Fellin business.

MR. SECOR: Well, your Honor, he was never asked specifically about the Stevens TV or the

Gaspari TV, whether or not that was done on his own personal basis or a partnership transaction, and as I understand the offer of proof, now they are going to offer the partnership papers to show it was not a partnership transaction , and Mr. Miller never claimed it was.

Certainly, in any case, we are on a collateral issue in an attempt to contradict this man on a collateral matter.

THE COURT: I am inclined to believe that is so, Mr. Wade. I think if you make your statement for the record as to what the offer of proof would be that that would suffice, rather than have the record indicate the questions and answers which would be put to Mr. Stevens.

MR. WADE: Well, I would offer Mr. Stevens to show He knows Edward Miller of Floral Nook Drive, Waterbury; that he knows he works for Miller and Fellin Television Company; that he bought a color TV from Mr. Miller in about July of 1967, for a price of $549, a Motorola console TV, and that he made out a check to Miller's TV, which was endorsed Miller's TV, Edward Miller, and that Mr. Stevens will further testify that he no longer has this set, that

the set was taken from his house, impounded from his house by the Connecticut State Police. And he was advised by the State Police that the set itself had been stolen. He no longer has the set and has not had it since the Connecticut State Police impounded it.

THE COURT: Your claim is that there is no connection between that set and State's Exhibit K?

MR. WADE: I beg your pardon?

THE COURT: You are not claiming there is any connection between that set and State's Exhibit K?

MR. WADE: Only to the extent, yourHonor, that once again, as we have pointed out, our recollection of Mr. Bishop's testimony is that State's Exhibit K, he could recollect very clearly because it was the largest set he had ever taken, and that when he brought State's Exhibit K to Mr. Vernale's house, Mr. Vernale said, "Don't bring any more sets like this; they are too hard to get rid of."

We would claim that Mr. Stevens' testimony would tend to indicate that there were other sets being stolen; that John Bishop was the supplier of stolen sets to Mr. Vernale.

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THECOURT: Hasn't that been admitted on the record?

MR. WADE: I beg your pardon?

THE COURT: It seems to me there is ample testimony from both Mr. Bishop, especially from Mr. Bishop, that there were any number of sets that were taken.

MR. WADE: That is right. THE only connection it would have with State's Exhibit K is that we have another Motorola TV, another floor model console, and we would offer this line of inquiry to show similarity of types of sets, along those lines.

We don't claim identity of sets at all.

I would like to state a couple of other grounds as a basis for our offering, just to have the record clear.

One, we claim it on the basis of inconsistency of testimony by John Bishop, and we claim it to rebut some of Mr. Bishop's testimony with regard to size of sets.

Secondly, we claim it on the theory of bias, interest, and motive, with regard to the testimony of Mr. Miller. We would intend to offer this line

of evidence to show that in fact he was dealing, he was selling stolen color TV sets.

I want to point out that as far as Mr. Stevens' testimony is concerned, we will not attempt to elicit from him that evidence that Mr. Miller knew that the set he sold to Mr. Stevens was In fact stolen. I don't think we could get that evidence in through Mr. Stevens.

In addition, we would offer it for the proof of dates, to show the general similarity in time that the sale of the set to Mr. Stevens took place in connection with the alleged receipt of stolen TV sets by Mr. Moynahan.

Further, we would offer the proof to negative the inference ofknowledge on the part of Mr. Moynahan. If it is claimed by the State that Mr. Moynahan, because of his relationship to Mr.Vernale, because of his ties with Mr. Vernale, as a reasonable man with honest intentions, should have known that the set he allegedly received was in fact stolen.

We would offer the inference, negative inference, through Mr. Stevens that one other man, to wit, Mr. Miller, apparently purchased the stolen TV set from Mr. Vernale and sold it to Mr. Stevens and we

would offer that as a negative inference that Mr. Miller didn't know Charlie Vernale was dealing in stolen colored TV sets, and, if indeed Mr. Miller is innocent, by his own admission, he did get a stolen TV set from Mr. Vernale, and we would offer this witness to prove that it was stolen.

We would claim it negatives the inference of knowledge on the part of Mr. Moynahan.

MR. SECOR: If the Court please, I think we might correct the statement that this witness could in fact tell us the set was stolen. All this witness can tell us was the fact that the Connecticut State Police removed the set from his house. That is what he can tell us. I don't think there is any connection between the Stevens set and Mr. Bishop or, for that matter, to Mr. Vernale.

At least through Mr. Stevens. So I think we are going a little far afield in our claims, as far as what this witness can tell us. He can tell us he bought a set from Miller, and subsequently it was removed from his house by the police, and that is all.

MR. WADE: Subject to connecting it up, we can recall Captain Bishop, to put him on the

stand to testify as to the results of his investigation, to testify where he thinks the stolen set obtained from Mr. Stevens was stolen from, and who stole it.

Secondly, we would claim the evidence regarding Mr. Stevens' stolen TV set once again, to negative that inference.

THE COURT: You keep using the word "stolen," but would you be able to indicate through Mr. Stevens that this was a stolen set?

MR. WADE: We can do it this way --

THE COURT: I said, from Mr. Stevens.

MR. WADE: Not from Mr. Stevens.

MR. SECOR: I think, if the Court please, the offer of proof should be confined to this witness who is being offered.

MR. WADE: Once again, subject to being connected, if we cannot put him on, we cannot connect it to anything.

THE COURT: I think in order to preserve the record, probably maybe we ought to hear Mr. Stevens, that is to say, on a dry run. And then there will be no question in the event of an appeal, as to what the testimony would have been. I think we ought

to hear what Mr. Stevens has to say, in the absence of the jury.

Put Mr. Stevens on.

Again, I must ask if anybody is connected with the television, radio, or news media, you will now leave the courtroom.

I think you were sworn in, Mr. Stevens. Please be seated.

EXAMINATION BY MR. WADE:

Q Mr. Stevens, have you given your name and address for the record?

A Yes.

Q Will you give your name and address for the record?

A Carl R. Stevens, Thomaston, Connecticut, Major in the Signal Corps, owner of the Stevens Company in Waterbury.

Q Do you know Edward Miller, 19 Floral Nook, Waterbury?

A I believe that is his address. I know an Edward Miller, yes.

Q Is this the Edward Miller who works for Edward -- for Miller and Fellin TV Company?

A Well, I didn't know but what he was in business for himself or with somebody else.

* * * * 24

MR. SECOR: I will object to this, if the Court pleases.

THE COURT: I am going to sustain the objection because the testimony is nothing inconsistent with what Mr. Miller has said, so far as my recollection goes. That sometimes he did work under his own name. That was my recollection. I may be wrong, but I am going to sustain the objection.

MR. WADE: May we have an exception?

THE COURT: Exception.

MR. WADE: We will retain this check..

THE COURT: You may step down, Mr. Stevens.

(Witness excused.)

MR. WADE: I would like the record clear that we are excepting to the ruling, on the overall ruling on the evidence as well as to the specific question of whether or not the evidence could come in on how Mr. Miller was doing business.

THE COURT: The ruling of the Court is, gentlemen, that the testimony of Mr. Stevens leads into collateral issues and that it is irrelevant at this time.

MR. WADE: Now, while the jury is still excused --

THE COURT: I would also like to state for the record, it seems to attack the credibility, it seems to attack the credit of Mr. Miller, and that credit cannot be attacked in this fashion. It seems to attack the character of Mr. Miller, and it cannot be done by specific acts. It must be done by general reputation.

MR. WADE: While the jury is still excused, we have a Mr. Gaspari standing by. We would offer Mr. Gaspari on the same basis as Mr. Stevens, for the purpose of a set which was subsequently proven to be stolen.

THE COURT: Can we agree, gentlemen, that his testimony is substantially that offered by Mr. Carl Stevens?

MR. WADE: I can agree to that. I don't know if the State could.

MR. SECOR: As far as I know, that is all he could testify to, your Honor.

THE COURT: In that event, I take it there is objection.

MR. SECOR: There is.

THE COURT: The objection will be sustained on the same ground.

MR. WADE: Note an exception.

THE COURT: An exception may be noted.

MR. HENNESSEY: Excuse me, your Honor, may I just tell Mr. Stevens he can leave?

MR. WADE: For the record, your Honor, the witness we intended to call is Mr. Eugene Gaspari, who would testify substantially the same as Mr. Stevens, and we take exception to your Honor's ruling denying us permission to present this evidence.

THE COURT: All right. Call your next witness.

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PAUL MOYNAHAN :

v. : CIVIL NO. H-218

JOHN R. MANSON, COMMISSIONER OF CORRECTION OF THE STATE OF CONNECTICUT :

MEMORANDUM OF DECISION

The petitioner, Paul Moynahan, one-time Deputy Police Superintendent of the City of Waterbury, Connecticut, was convicted on February 4, 1970, after a jury trial, of the crime of receiving stolen goods.[1/] The conviction was affirmed by the Connecticut Supreme Court. State v. Moynahan, 164 Conn. 560, 325 A.2d 199, cert. denied, 414 U.S. 976 (1973). He now seeks a writ of habeas corpus. Jurisdiction exists in this court pursuant to 28 U.S.C. §§ 2241, 2254.[2/]

I. The Petitioner's Claims

The State accused the petitioner of having received a stolen twenty-two inch Motorola color television console from one Charles Vernale, known to the police in the Waterbury area

1/ In violation of Conn. Gen. Stat. Ann. §§ 53-63, 53-65 (1960)

2/ The petitioner is currently free on bond, pending the outcome of this action. This does not, of course, affect this court's jurisdiction. See Hensley v. Municipal Court, 411 U.S. 345 (1973).

as a dealer in stolen property. At trial, the prosecution was able to produce the affirmative evidence of only two witnesses; John Bishop, a convicted thief, who testified that the television set in question was one of many he had stolen in the course of several burglaries of appliance stores and that he helped Vernale deliver it to the petitioner's home;[3] and Edward Miller, a Waterbury television repairman, who identified the stolen television set, which had been found abandoned in a field, as one which he had earlier repaired in the home of the petitioner. Vernale was also called to the stand by the prosecutor, but he invoked the fifth amendment.[4] Finally, the State offered impeachment of the petitioner's denials.

Petitioner raises nine separate challenges to the conduct of his trial, which he alleges are of constitutional magnitude.[5] Of these, three merit extended discussion.

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[3] Bishop's identification of the television is weakened by prior statements where he stated that the set in question "looked like" the one he had stolen. These statements were not released to the defense. See note 22 infra. Bishop also connected the petitioner to Vernale, testifying that he had seen and spoken to him at Vernale's home. Petitioner did not deny this, but claimed that Vernale had served him as a source of information.

[4] See IV infra.

[5] A tenth claim, that of ineffective assistance of counsel has been foretold if this court should refuse to pass on the denial of cross-examination claim. This claim has not been formally raised, and needless to say, has not been presented to the state courts. Picard v. Connor, 404 U.S. 270 (1971). As to the nine original claims, the State concedes exhaustion.

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II. The Right-to-Confrontation Claim

A. On Its Merits

The most damaging testimony[6] against the petitioner was that given by the television repairman, Edward Miller. Mr. Miller testified that, although he had never previously met the petitioner, Mr. Moynahan had called him at home on a Sunday morning and had asked him to come to his home to repair his television set which was without sound.

Miller testified that he had gone to the petitioner's home and had discovered that the sound coil, which was enclosed in a box in the set's chassis, was broken. He further testified that he had repaired the set in the petitioner's home by opening the metal box, removing the coil, soldering the broken wire, covering the wire with electrical tape to hold it in place, and then reassembling the set, finishing the repair by soldering the metal box. For this work, he testified, the petitioner paid him $15.

He further testified that sometime later, after the State Police had found the set smashed and abandoned in a

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6/ The only other witness who actually placed the set in the petitioner's home was the admitted thief, Bishop. He gave a statement to the police and testified before the grand jury that the set delivered to Moynahan was "probably" an R.C.A. color console. At trial he testified that it was a twenty-three inch, Early American style Motorola stolen from a different store at a different time. On cross-examination Bishop was shown to have made a number of prior inconsistent statements. Miller's importance was acknowledged by the State in its closing argument. See Tr. 1970-72, Exhibit 10 to Defendant's Return.

field, he had been able to identify it by the solder marks on the box, and that he had been present when the State Police opened the box and confirmed the presence of the electrical tape.

Petitioner claims that he was deprived of his sixth and fourteenth amendment rights to confront the witnesses against him by the refusal of the trial judge to allow him to impeach Miller's testimony by showing that Miller, himself, was a member of the stolen-goods ring[7/] along with John Bishop and Vernale, and therefore had a strong personal interest in falsifying his testimony. Petitioner claimed that Miller's involvement served both to lend credence to a theory that the petitioner was being "framed" by the two witnesses, and to make Miller vulnerable to pressure from the police and prosecutors to force him to alter or color his testimony.

Petitioner claims that Miller was in fact an outlet for stolen television sets, i.e., that he sold sets which he obtained from Vernale and that when repair work had to be done on sets which Vernale had sold, it was done by Miller. Petitioner attempted to present this evidence to the jury in two ways, through cross-examination of Miller himself, and through the testimony of two witnesses who would testify that

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7/ The existence of an extensive burglary and stolen-goods ring was brought out at trial by the State through the testimony of Captain Wayne Bishop of the State Police. Tr. 646-47, Exhibit 5 to Defendant's Return.

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they has purchased sets from Miller at unusually low prices, and that the sets had turned out to have been stolen. In both instances the trial judge rejected the offers of proof, ruling that the issues raised were collateral. While the judge allowed Miller to be examined to a limited extent concerning sales of sets which he had obtained from Vernale, in order to challenge his identification of the specific set he claimed to have repaired in the petitioner's home, he refused to allow the questioning to be expanded to show Miller's general business practices, and the obvious inference that they were dishonest and inferably in aid of a stolen radio and television ring.[8/]

To the extent that the petitioner was not allowed to cross-examine Miller concerning his alleged criminal involvement, this case is governed by Davis v. Alaska, 415 U.S. 308 (1974).[9/] In that decision, the Supreme Court held that it was constitutional error to deny a defendant the right to

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8/ Tr. 496-502, Exhibit 6 to Defendant's Return.

9/ It is only fair to emphasize that Davis was decided after the petitioner's conviction had been affirmed, and that the trial court therefore did not have the advantage of its guidance. This is especially important since a review of the transcript clearly shows that the trial judge was extremely willing to provide the petitioner with every right which the case law, as it had been developed at that time, made clear was his due. Nevertheless, it cannot be said that the Davis decision significantly expanded or created a new constitutional right, i.e., one which might not be cognizable in a habeas proceeding. Chesney v. Robinson, 403 F. Supp. 306, 311 n.10 (D. Conn. 1975), petition for cert. filed, 44 U.S.L.W. 3645 (U.S. May 18, 1976) (No. 75-1616).

develop before the jury the fact that a witness had himself been a suspect in the crime alleged, and therefore had a peculiar vulnerability to police pressure. The Court stated:

> "We cannot accept the Alaska Supreme Court's conclusion that the cross-examination that was permitted defense counsel was adequate to develop the issue of bias properly to the jury. While counsel was permitted to ask Green whether he was biased, counsel was unable to make a record from which to argue why Green might have been biased or otherwise lacked that degree of impartiality expected of a witness at trial. On the basis of the limited cross-examination that was permitted, the jury might well have thought that defense counsel was engaged in a speculative and baseless line of attack on the credibility of an apparently blameless witness or, as the prosecutor's objection put it, a 'rehash' of prior cross-examination. On these facts it seems clear to us that to make any such inquiry effective, defense counsel should have been permitted to expose to the jury those facts from which jurors, as the sole triers of fact and credibility could appropriately draw inferences relating to the reliability of the witness."

415 U.S. at 318.

Here, as in Davis, the petitioner was not allowed to cross-examine an important prosecution witness concerning his possible bias due to his involvement, or suspected involvement, in the same criminal scheme, and therefore was deprived of essential constitutional rights. And while Davis holds that, given these circumstances, no showing of prejudice is necessary, 415 U.S. at 318, quoting Smith v. Illinois, 390 U.S. 129, 131 (1968), it is clear that the State capitalized on the defense's inability to show Miller's involvement. In his rebuttal argument, the prosecutor was able to argue:

> "Why shouldn't you believe Miller? I will tell you why you should believe him. He had no axe to grind in this case. . . .
>
> "Why does he do a thing like that? Is there some kind of inference in the background here that the Connecticut State Police got him to do it? There has been no evidence of that, not a shred of evidence of that."

Tr. 1970-71, Exhibit 10 to Defendant's Return.[10/]

While this denial of cross-examination was in itself error of constitutional magnitude, the error was compounded when the defendant was prohibited from calling two additional witnesses, Stevens and Gaspari, to testify concerning the circumstances under which they purchases televisions from Miller which later proved to have been stolen.

It is clear that, as a matter of evidence, when attempting to show bias or interest, as opposed to bad reputation, the examiner is not bound to accept the witness' answer, but is free to call additional witnesses for impeachment. McCormick, Evidence § 40 at 81 (2d ed. 1972). And while the right to call additional witnesses was not at issue in Davis, it does fit into the phrase "to expose to the jury those facts from which [they] . . . could appropriately draw inferences . . . ," and the denial of this right was likewise a denial of the sixth amendment right of confrontation. Johnson v. Brewer, 521 F.2d 556 (8th Cir. 1975).

10/ This argument borders on the unconscionable considering the prosecution's knowledge of Miller's involvement. See III infra.

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B. Waiver

Although the petitioner raised the issue of denial of cross-examination on appeal, the Connecticut Supreme Court refused to rule on it, holding that it had been abandoned.[11] Petitioner seeks to challenge that determination here.[12]

An examination of the transcript[13] convinces me that the conclusion of the Connecticut Supreme Court is not fairly supported by the record. 28 U.S.C. § 2254(d)(8).

After an in-chambers discussion concerning the permissible scope of petitioner's cross-examination,[14] the trial

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11/

> "The line of inquiry which the defendant claims he was not allowed to follow was intentionally abandoned after Miller had been questioned in the absence of the jury, and therefore the claim that cross-examination was unduly restricted is utterly without merit."

State v. Moynahan, 164 Conn. 560, 588, 325 A.2d 199 (1973). This holding applied only to the denial of cross-examination of Miller, the court expressly affirmed the decision to exclude the extrinsic impeachment testimony of Stevens and Gaspari.

12/ While waiver is a mixed question of law and fact, and therefore is arguably subject to the provisions of 28 U.S.C. § 2254(d), I am not precluded from reviewing the record to determine if there is factual support for the state court conclusion. § 2254(d)(8). See Henry v. Mississippi, 379 U.S. 443, 452-53 (1965); cf. LaVallee v. Delle Rose, 410 U.S. 690 (1973). See also Douglas v. Alabama, 380 U.S. 415, 421-22 (1965); Wright v. Georgia, 373 U.S. 284, 289-91 (1963).

13/ Mr. Miller's testimony is contained in Exhibit 6 to Defendant's Return.

14/ The exact nature of the agreement reached in this discussion is not part of the record. It is a subject of dispute between the parties. I do not find it necessary to resolve the dispute.

judge allowed the petitioner's attorney to question Miller in a "dry-run" out of the presence of the jury.[15/] The questions asked were to serve as an offer of proof in the event that the judge held the answers inadmissible. Objections were made by the prosecution to almost all of the questions. The judge sustained some objections but rejected others.[16/] At the end of the offer, the judge ruled that all the questions which he had allowed could be read to the jury. Both sides objected to this proposal, at which time the following colloquy occurred:

> "MR. HENNESSEY: May this line of inquiry, your Honor, be considered as an offer of proof in the absence of the jury?
>
> "THE COURT: Yes, and I would suggest that the best way of handling this would be in the presence of the jury, to have the reporter read the questions and the answers to the jury, and have the questions and answers appear before them rather than have you repeat them again.
>
> "MR. HENNESSEY: Well, I didn't want to ask the questions in their presence.
>
> * * *
>
> "MR. GAFFNEY [the prosecutor]: You know, I would just quarrel with this procedure, your Honor, because I think this is the reason we did it in the absence of the jury.
>
> * * *

15/ This examination, which takes up eleven pages of transcript, 554-64, is simply too long to reproduce, despite its importance to the resolution of this matter.

16/ Why the judge would not allow the questions to be answered out of the presence of the jury, as part of the offer of proof, is not clear.

"MR. GAFFNEY: I would object to the procedure recommended by the Court.

* * *

"THE COURT: Your objection is well taken. I merely suggested it as a precaution so that the jury would not have before it anything which is improper, but if you object and your objection is sustained.

"MR. GAFFNEY: Thank you.

"MR. HENNESSEY: I won't go into this line of inquiry at all.

"THE COURT: Then that solves the whole problem.

"MR. HENNESSEY: But I would only ask that you permit me to have those portions, those questions which we have asked here be presented to the Court as an offer of proof.

"THE COURT: Any objection to that?

"MR. GAFFNEY: No objection.

"THE COURT: Very well. It is so ordered."

Tr. 564-66, Exhibit 6 to Defendant's Return.

I find it clear from this record that, having been denied the opportunity to develop the theory of bias due to criminal involvement, the defendant chose to rest on his offer of proof rather than to submit the individual preliminary questions which had been allowed to the jury. Holding this to be an abandonment of the claim of impermissible curtailment of cross-examination was clearly without basis.

III. The Brady Claims

The petitioner's second claim is that, despite a request for all exculpatory information in the possession of

the prosecution, the State failed to timely deliver material which demonstrated Miller's criminal involvement and that he had been a target of the State Police investigation. This, the petitioner claims, violated his right to due process. Brady v. Maryland, 373 U.S. 83 (1963).

At the outset it must be noted that, although the defense made a specific and lengthy request for exculpatory evidence, it did not request any material specifically concerning Mr. Miller. Therefore the standard this court must apply in weighing the petitioner's claim is to determine whether, had he been able to present the withheld evidence to the jury, it would have created a reasonable doubt that did not otherwise exist. United States v. Agurs, 44 U.S.L.W. 5013, 5017 (U.S. June 22, 1976).

The petitioner's claim focuses on two related areas of information which were available to the prosecution, the knowledge of Miller's criminal involvement which would have had a bearing on his state of mind, and the existence of an investigation, which would have been relevant to the issue of whether he had been threatened or promised reward by the authorities. The Connecticut Supreme Court denied the petitioner's appeal on this point because it held that he had failed to prove the existence of any material which had been withheld.[17/] State v. Moynahan, 164 Conn. 560, 592-93, 325 A.2d 199 (1973).

17/ At trial the petitioner had once again requested all exculpatory evidence, especially as was contained in statements

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A. Miller's Criminal Involvement

The material retained by the prosecution does contain numerous facts which support the theory that Miller was dealing in stolen televisions. However, this was a situation already known to the defense and one which they attempted diligently to argue to the court and the jury.[18] While there were many specific additional items of evidence which were unknown to them, I am not sure that any one of them, or even their combination, would have added appreciably to the defendant's argument. This additional information cannot, therefore, be said to be material under the standard set forth in Agurs. Therefore I do not find that the failure to divulge this information violated the petitioner's right to due process to such a degree that it is independently remediable in habeas corpus.

17/ cont'd

made by Mr. Miller to the police or the grand jury. The trial judge refused to examine these statements in camera and instead ordered the prosecution to turn over any exculpatory material. The prosecution complied with this order by selecting parts of the material it had and turning those parts over to the defense. The remainder was sealed for review on appeal. It was still sealed when delivered to this court in response to my order. Faced with the similar difficulty of requiring the petitioner to prove that the retained material was, in fact, exculpatory, I ordered it released to the petitioner for the purpose of presenting this case.

18/ The fact that the petitioner was not allowed to use the information in his possession to cross-examine Miller is not relevant in determining the materiality, under the Agurs standard, of the information withheld by the prosecutor. The Brady claim must be analyzed separately.

B. Miller's Vulnerability To Prosecutorial Influence

While the petitioner's counsel had some awareness of Miller's criminal involvement, and while this does necessarily imply a certain vulnerability, see, e.g., Davis v. Alaska, 415 U.S. 308 (1974), they were not able to confirm this inference with any factual material. Thus they were unable to contradict Miller when he testified under oath that no offers had been made to him and that he had not been the subject of an investigation.[19] Further, they were unable to

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19/

"Q. At the time you were first questioned by the police, Mr. Miller, were you told by any police that you were under investigation for anything?

* * *

"A. No.

"Q. And at any subsequent time after that first inquiry were you told by any member of the police, or any member of the State's Attorney's office that you were under investigation?

* * *

"A. No.

* * *

"Q. Was any threat made to you that you would be arrested?

"A. No.

* * *

"Q. At any time did anyone make any promise to you as to what might occur if you did testify?

[Footnote continued on next page.]

counter when the State affirmatively argued that no pressure had been brought to bear. See quote on p.7 supra.

An inspection of those portions of the transcript of the police interrogation which were not disclosed to petitioner's counsel leads to the inescapable conclusion that Miller was less than candid on this point, and that the prosecutors must have been aware of it.[20] This case is

19/ cont'd

"A. No there was no promise.

"Q. Well, was there any conversation about it with anyone?

* * *

"A. No, there was no conversation about that."

Tr. 555-57, Exhibit 6 to Defendant's Return.

20/ The transcript of Miller's interview by State Police officers on February 18, 1969, clearly discloses that Miller was a subject of the investigation and that he was threatened with prosecution. One portion, which was not turned over to the defense, contains the following exchange:

"Q. Well, let me put it this way: If I had nothing to hide, I wouldn't be concerned, and it's very easy for me and anyone to tell the truth. It's when --

"A. Oh, I'm not trying to hide anything.

"Q. -- you don't tell the truth -- it's when you don't tell the truth and then you tell an untruth, and then before you know it you have to tell something else to cover that one and then before you know it you're in up to your ears. So, the best thing at this particular point is to come out with the truth, complete truth, get it all off your chest at once, and it's the end of it, and we go from there.

[Footnote continued on next page.]

therefore similar to Napue v. Illinois, 360 U.S. 264, 269 (1959). There the Supreme Court stated:

> "The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty,

20/ cont'd

> "Well, the point that I'm trying to make here, too, is that we've got two sets here that you've handled that are stolen, so even if there were twenty-two sets, it isn't going to be any more difficult for twenty-two than it is for two.
>
> "You follow me?"

At 38-39 (emphasis added). Later a police officer stated:

> "Q. And, so, this is the point that we're trying to make, Ed; we're just trying to get down to the basic facts in this thing, get it over with, square away Ed Miller, and then we can go on. Otherwise, we're going to have to start looking at Ed Miller a little stronger.
>
> "You follow me, Ed?"

At 41 (emphasis added). And finally:

> "Q. Yeh, I'm not talking about the north end of town. I'm talking, Ed, where you've known Charlie Vernale for a couple years, and you've known pretty much that Charlie's had an awful lot of stuff, he's handled an awful lot of stuff. He sold stuff to everybody in town, and I'm sure that you've handled more than two sets from him.
>
> "As I say, our information indicates this, Ed. We're verifying information. This is what we are in the process of doing right now."

At 44 (emphasis added).

> does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend."

It is not necessary for this court to find as a fact that the state prosecution knowingly abetted Miller in his false testimony, for in Giglio v. United States, 405 U.S. 150, 153 (1972), the Court extended the rule of Napue to cover "suppression of material evidence . . . 'irrespective of the good faith or bad faith of the prosecution.'" See Brady v. Maryland, 373 U.S. 83, 87 (1963).

The only question, then, is whether the evidence that Miller was a target of the police investigation, was threatened with prosecution, but was in fact never charged, would have been material under the test set out in United States v. Agurs, i.e., whether it creates a reasonable doubt that did not otherwise exist.[21/] I conclude that the answer to that question must be in the affirmative.

Given the fact that Miller was the State's only "clean" witness, and that the prosecutor emphasized this fact

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21/ Prior to the decision in Agurs, the rule in the Second Circuit was that the standard of materiality varied with the prosecutor's culpability. See, e.g., United States v. Morell, 524 F.2d 550 (2d Cir. 1975); United States v. Seijo, 514 F.2d 1357 (2d Cir. 1975). This rule was rejected in Agurs, however, in favor of a standard which varies according to the specificity of the request for disclosure.

in his argument, it would necessarily have had a definite impact on the jury had the defense been able to show not only that Miller had been a co-conspirator with John Bishop and Vernale in the stolen-goods ring, but that the State Police had been aware of this fact and for some unexplained reason had chosed not to press charges against him. It does not require an unusually agile imagination to tie Miller's testimony to his personal freedom. The suppressed evidence does, therefore, in my estimation, give rise to a reasonable doubt as to the petitioner's guilt, and in light of this fact I conclude that he was deprived of due process when the prosecution chose to suppress it.[22/]

IV. The Namet Claim

One additional claim raised by the petitioner merits discussion. Petitioner charges that the State violated his rights under the sixth and fourteenth amendments when it called Charles Vernale, the alleged central figure in the stolen-goods ring, to testify despite knowledge that Vernale would claim his rights under the fifth amendment, and then, in its closing argument, invited the jury to draw an inference from Vernale's refusal to testify.

22/ The petitioner argues that the State also suppressed exculpatory impeachment evidence concerning John Bishop, the admitted thief. A review of the evidence leads to the conclusion that although some evidence was suppressed which should have been released, no item or combination thereof was such that it could be considered material under the Agurs standard.

At the trial, when the State announced its intention to call Vernale, petitioner's counsel informed the court that Vernale was then facing charges arising from the same transaction, that his court-appointed attorney was present in court, and that he believed that Vernale would refuse to testify, with the likelihood that the jury might draw adverse inferences against the defendant. The prosecutor represented that he had no knowledge of Vernale's intention to refuse to testify. He furthermore objected to the defense's suggestion of a preliminary voir dire, out of the presence of the jury.[23]

The trial court overruled the defense objection and allowed the State to call Vernale. After several preliminary questions, in answer to which Vernale stated that he and the defendant were friends, the following occurred:

> "Q. And tell the ladies and gentlemen of the jury something about your friendship. What did it involve or entail, for example?
>
> "A. I would like to take the Fifth Amendment on that for the simple reason I don't want to incriminate myself in any way. This is not my trial.
>
> "Q. All right. Were you ever an informant for Mr. Moynahan?
>
> "A. Never. I was never an informer.
>
> "Q. Did you ever give him any information of any kind concerning criminal activities?

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[23] In light of his knowledge of Vernale's pending criminal charges, and his objection to the voir dire, the prosecutor's representation is open to question.

"A. I take the Fifth Amendment on that. I don't want to incriminate myself in any way, also.

"Q. Did you ever make a gift of a television set, a color television set, to Mr. Moynahan?

"A. I take the Fifth Amendment on that. I don't want to incriminate myself."

Tr. 21-22, Exhibit 3 to Defendant's Return.

The State asked no further questions of Vernale. On cross-examination, Vernale was willing to testify on some subjects but stated his intention to invoke the fifth amendment concerning the events which underlay the charges against Mr. Moynahan. Vernale's refusal to testify was the subject of a comment by the prosecutor in his rebuttal argument,[24/] as well as an instruction by the trial judge.[25/]

24/ In response to the defense's attacks on the credibility of its witnesses, the prosecution admitted that neither John Bishop nor Vernale were reputable. In his reference to Vernale however, the prosecutor emphasized his refusal to testify:

"And Charlie Vernale, who was asked, 'Did you give the defendant, Paul Moynahan, a color television set? Did you deliver it to him?' And he took the Fifth Amendment. He is not a very great guy."

Tr. 1969, Exhibit 10 to Defendant's Return.

25/ Curiously, the judge repeated the offending questions in the curative instruction. He then charged however:

"Under our Constitution Mr. Charles Vernale had the right to refuse to answer those questions on the ground of self-incrimination. [C]onsequently, you are now instructed that no inferences should be drawn by you as to what the answers

The question for this court is whether these occurrences combined to deprive Mr. Moynahan of his right to a fair trial, or to his right to confront a key witness against him.

At the outset, it must be noted that the practice of allowing a witness, especially one involved in the same crime, to testify with knowledge that he or she will invoke the fifth amendment has been almost universally criticized.[26] This is

25/ cont'd

> might have been. And, of course, you are not to draw any adverse inferences against Mr. Paul Moynahan by reason of the fact that Charles Vernale refused to answer the questions on Constitutional grounds or, for that matter, on any other grounds."

Tr. 1993, Exhibit 8 to Defendant's Return.

26/ In its review of the trial, the Connecticut Supreme Court offered the justification that the prosecutor had to at least call the witness and have him invoke his privilege on the record in order to avoid the so-called "missing witness" charge to the effect that the jury may draw an unfavorable inference from the failure of a party to produce a witness whom it should naturally call and whom it had the power to produce. Queen v. Gagliola, 162 Conn. 164, 168, 292 A.2d 890 (1972); Secondino v. New Haven Gas Co., 147 Conn. 672, 675, 165 A.2d 598 (1960). However, this inference is generally held not to apply to a witness who is privileged. 2 Wigmore, Evidence § 286 (3d ed. 1940). Cf. Rule 804 (a)(1), Fed. R. Evid. And see Thomas v. Ganezer, 137 Conn. 415, 422, 78 A.2d 539 (1951), where the court stated:

> "Because of her inability, in so far as appeared, to add anything of testimonial value for the consideration of the jury, the defendant was not in that category of witnesses who would naturally have been called to the stand."

Furthermore, as Judge Learned Hand pointed out in United States v. Maloney, 262 F.2d 535, 537 (2d Cir. 1959), in these circumstances, the interest of the defendant in avoiding an inference of guilt simply outweighs that of the State in avoiding the inference which arises from not having called a particular witness.

because of the recognition that, even despite a curative instruction, the jury will probably not be able to resist drawing an unfavorable inference from the simple invocation of the privilege.[27] It does not, however, follow that every transgression of the desired rule warrants reversal, or as in this case, the issuance of a writ of habeas corpus.

The central case in this area is, of course, Namet v. United States, 373 U.S. 179 (1963), whose principle was raised to constitutional level and made applicable to state proceedings in Douglas v. Alabama, 380 U.S. 415 (1965). Under the rule set out in those cases, the practice of compelling a witness to invoke his fifth amendment privilege can require reversal in two circumstances: (1) when it amounts to prosecutorial misconduct, i.e., when a prosecutor knowingly attempts to influence the jury through the impermissible inference, and thus deprives the defendant of his right to due process; or (2) when it allows the prosecution to add critical weight to its case by eliciting evidence of inferences in a manner which does not allow the defendant to subject the witness to cross-examination, and thus deprives him of his right to confrontation guaranteed by the sixth amendment.[28]

27/ See the discussion in In re Fernandez, 31 Conn. Supp. 53, 59 n.2, 321 A.2d 862 (Sup. Ct. New Haven Co. 1974).

28/ Made applicable to the states in Pointer v. Texas, 380 U.S. 400 (1965).

Unfortunately, this rule has not proved easy to apply. Because it requires a subjective weighing of the evidence submitted by the prosecution, the prosecutor's intentions, and the likely overall effect on the jury; it is not unusual that the decided cases offer no clear guideline, and in some cases appear to come to different conclusions on nearly identical facts.[29]

Among the factors which courts take into account appear to be: the prosecutor's intent in calling the witness, the number of questions which he asks, the importance of the questions to his case, whether there is a reference to the testimony in the closing argument, and whether or not the judge gives a curative instruction.[30]

29/ Compare Cain v. Cupp, 442 F.2d 356, 358 (9th Cir. 1971), which stated:

> "Although calling the witness may not in itself be sufficient to justify habeas corpus relief, when coupled with the prosecutor's closing argument, it will justify such relief."

with Cota v. Eyman, 453 F.2d 691 (9th Cir. 1971), cert. denied, 406 U.S. 949 (1972), decided only eight months later, which on nearly identical facts denied relief and distinguished Cain on the length of the reference in the prosecutor's closing argument.

30/ The Court of Appeals for the Eighth Circuit has held that once error is committed, it cannot be cured by an instruction. United States v. King, 461 F.2d 53 (8th Cir. 1972). The position of the Second Circuit is not clear. While Judge Learned Hand stated that a curative instruction could be an extenuating circumstance, United States v. Maloney, 262 F.2d 535, 538 (2d Cir. 1959), he felt bound by a line of cases whose reasoning was later rejected in Bruton v. United States, 391 U.S. 123 (1968). In this case, however, I do consider the curative instruction, following Frazier v. Cupp, 394 U.S. 731 (1969). And see United States v. Burket, 480 F.2d 568 (2d Cir. 1973).

The present case appears to be the classic borderline case. The question of the prosecutor's intent is not clear. While I find that he had at least constructive knowledge of Vernale's intention to refuse to testify, there is no evidence of flagrant behavior on his part. While there were only three questions involved, one of them, the last one asked, was critical, and it was repeated in the prosecutor's rebuttal and in the trial judge's instructions.

The question of the critical weight of the inference and its impact on the jury is similarly unclear. This is probably the central factor, and at least one court has reversed a conviction on similar facts.[31/] The State argues, however, that the inference was not critical in this case, because the testimony of John Bishop was corroborated by that of Miller. While that is no doubt true, it is also, however, the result of the two constitutional errors which I have already discussed. Had the defense been able to thoroughly cross-examine Miller, and had it had the advantage of full

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31/ In United States v. Maloney, supra, the court placed great emphasis on the quality of the other evidence before the jury. It noted:

> "The jury was unlikely to accept Parker's testimony unless it was corroborated. He had been an accomplice and hoped for lenity by inculpating his associates. Moreover, his own criminal record was extremely bad."

262 F.2d at 536.

This statement applies as well to the testimony of the admitted thief in this case, John Bishop.

disclosure by the prosecutor, it would have been unlikely that Miller could have added measurably to the overall credibility of the State's case.

The prosecutor's reference in his rebuttal argument, which was clearly improper, was not especially flagrant. While he did repeat the testimony, he was content to leave it at that, and did not go the extra step of actually arguing the inference to the jury.

Finally there is the judge's curative instruction, which although intended to preclude the jury from drawing the improper inferences, actually compounded the error by refreshing the jury's memory of the critical nature of the question asked.

Fortunately, it is not necessary for me to decide whether, had this been the sole constitutional attack on the conviction, it would have merited relief in the nature of habeas corpus. It is enough to say that it was improper on the part of the prosecutor to ask the questions in the face of his knowledge of Vernale's intention, and to comment on Vernale's refusal to testify in his closing argument. This behavior significantly added to the unfairness of a proceeding which I have already found failed to meet constitutional requirements in two other respects.

V. The Remaining Claims

In addition to the four claims which I have outlined, the petitioner raises five additional challenges which I find do not merit extended discussion.

The petitioner objects that a State Police officer was allowed to testify to his recollection of an interview with the defendant, despite the fact that the State could have introduced a verbatim transcript of the interview. Even if the petitioner were correct in his claim that this was a violation of the "best evidence" rule, and under the prevailing interpretation he is not,[32/] this claim raises at best an evidentiary issue, and is therefore not properly cognizable in habeas corpus. Grimes v. Wainwright, 346 F. Supp. 713 (N.D. Fla. 1972).

The objection to that part of the judge's charge which cautioned the jury to weigh the petitioner's interest in the outcome of the trial when weighing his credibility is without merit. United States v. Mahler, 363 F.2d 673, 678 (2d Cir. 1966).

The petitioner's challenge to Connecticut's one-man grand jury procedure[33/] is likewise without merit. The constitutionality of that system has been upheld on prior occasions by this court.[34/] Insofar as the petitioner claims

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32/ See, e.g., People v. Swayze, 220 Cal. App. 2d 476, 34 Cal. Rptr. 5 (1963); McCormick, Evidence § 232 at 562-63 & n.26 (2d ed. 1972).

33/ Conn. Gen. Stat. Ann. § 54-47 (1976 Supp.).

34/ Puglia v. Cotter, 333 F. Supp. 940 (D. Conn.), aff'd mem., 450 F.2d 1362 (2d Cir. 1971), cert. denied, 405 U.S. 1073 (1972); Salvaggio v. Cotter, 324 F. Supp. 681 (D. Conn.), aff'd mem., 447 F.2d 1406 (2d Cir. 1971).

that he should have been given the warnings prescribed in Miranda v. Arizona, 384 U.S. 436 (1966), prior to his appearance before the grand jury, his claim is precluded by United States v. Mandujano, 44 U.S.L.W. 4629 (U.S. May 19, 1976). Also without merit is petitioner's claim that he was denied due process because in Connecticut the State's Attorneys, or prosecutors, are appointed by the courts before whom they practice.[35/] Cf. United States v. Richmond, 277 F.2d 702, 703 (2d Cir. 1960); United States v. Solomon, 216 F. Supp. 835, 838-43 (S.D.N.Y. 1963).

Finally, the petitioner's last two challenges, that he was denied a fair trial due to pre-trial publicity, and that he was denied due process by the Connecticut Supreme Court because it failed to explicitly rule on each of the points he raised on appeal, are frivolous.

VI. Conclusion

Petitioner has demonstrated that his conviction was accomplished in a proceeding in which he was denied material exculpatory evidence by the prosecution, and was effectively denied the right to cross-examine two of the three affirmative witnesses against him. In light of these errors of constitutional magnitude, his conviction cannot be allowed to stand. Therefore, unless the State shall elect to retry the petitioner

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35/ Conn. Gen. Stat. Ann. § 51-278 (1976 Supp.).

within sixty days of the entry of judgment in this action, a writ of habeas corpus shall enter, and he shall be released from custody.

SO ORDERED.

Dated at Hartford, Connecticut, this 31st day of August, 1976.

M. Joseph Blumenfeld
United States District Judge

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U. S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

PAUL MOYNAHAN :

v. : CIVIL NO. H218

JOHN R. MANSON, COMMISSIONER OF CORRECTIONS OF THE STATE OF CONNECTICUT :

NOTICE OF APPEAL

Notice is hereby given that John R. Manson, Commissioner of Corrections, defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from the order granting the plaintiff's application for a Writ of Habeas Corpus entered in this action on the 31st day of August, 1976 (Judgment dated September 2, 1976).

Dated at Woodbridge, Connecticut this 24th day of September, 1976.

BY _____
JOHN F. MULCAHY, JR.
DEPUTY CHIEF STATE'S ATTY.
STATE OF CONNECTICUT
DRAWER H, AMITY STATION
NEW HAVEN, CONN. 06525

BY _____
ROBERT E. BEACH, JR.
ASST. STATE'S ATTORNEY
STATE OF CONNECTICUT
DRAWER H, AMITY STATION
NEW HAVEN, CONN. 06525